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Memorandum on office of lieutenant-governor of a Province (with appendices).

Novermber,1937.

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OFFICE OF LIEUTENANT-GOVERNOR OF A PROVINCE: ITS CONSTITUTIONAL CHARACTER AND FUNCTIONS

(WITH APPENDICES)

NOVEMBER, 1937 — DEPARTMENT OF JUSTICE—OTTAWA, CANADA

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EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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1. Statutory Creation of Office and Provisions relating thereto.

The office of Lieutenant-Governor of a Province owes its existence, its constitutional character, functions and incidents to the provisions of the British North America Act, 1867, and to the terms of the commission and instructions issued to this important officer. The following provisions of that Act (sections 55, 56 and 57 being reproduced with the adaptations provided for by section 90), relate to, or have a bearing upon, the Office of Lieutenant-Governor, its constitutional status and functions:

Declaration of Executive Power in the Queen.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Application of Provisions referring to Governor General.

10. The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated.

Constitution of Privy Council for Canada.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.

Application of Provisions referring to Governor General in Council.

13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.

Governor General's Assent to Bills, &c.

55. Where a Bill passed by the House or Houses of the Legislature is presented to the Lieutenant-Governor of the Province for the Governor General's Assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to the Governor General's Instructions, either that he assents thereto in the Governor General's name, or that he withholds the Governor General's Assent or that he reserves the Bill for the Signification of the Governor General's pleasure.

Disallowance by Order-in-Council of Act assented to by Lieutenant-Governor.

56. Where the Lieutenant-Governor of the Province assents to a Bill in the Governor General's name, he shall by the first convenient Opportunity send an authentic copy of the Act to the Governor General, and if the Governor General in Council within One Year after Receipt thereof by the Governor General thinks fit to disallow the Act, such Disallowance (with a Certificate of the Governor General of the Day on which the Act was received by him) being signified by the Lieutenant-Governor by Speech or Message to the House, or, if more than one, to each of the Houses of the Legislature, or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of Governor General's pleasure on Bill reserved.

57. A Bill reserved for the Signification of the Governor General's pleasure shall not have any Force unless and until within One Year from the Day on which it was presented to the Lieutenant-Governor for the Governor General's Assent, the Lieutenant-Governor Signifies, by Speech or Message to the House, or, if more than one, to each of the Houses of the Legislature or by Proclamation, that it has received the Assent of the Governor General in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of the House, or of each House, if more than one, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of the Province.

Appointment of Lieutenant-Governors of Provinces.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada.

Tenure of office of Lieutenant-Governor.

59. A Lieutenant-Governor shall hold office during the Pleasure of the Governor General; but any Lieutenant-Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

Salaries of Lieutenant-Governors.

60. The Salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Oaths, &c., of Lieutenant-Governor.

61. Every Lieutenant-Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor General.

Application of provisions referring to Lieutenant-Governor.

62. The Provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the Time being of each Province or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Province, by whatever Title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant-Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely, —the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in Quebec, the Speaker of the Legislative Council and the Solicitor General.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. Executive Government of Nova Scotia and New Brunswick.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the Advice or with the Advice or Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant-Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec. Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.

66. The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the Advice of the Executive Council thereof. Application of provisions referring to Lieutenant-Governor in Council.

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant-Governor during his Absence, Illness, or other Inability. Administration in absence, &c. of Lieutenant-Governor.

82. The Lieutenant-Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province. Summoning of Legislative Assemblies.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—The Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved, —shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada. Application to Legislatures of provisions respecting money votes, &c.

92. In Each Province the Legislature may exclusively make laws in relation to Matters coming within the class of subject next hereinafter enumerated; that is to say,— Subject of exclusive Provincial Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, *except as regards the Office of Lieutenant-Governor.*

It will be observed that by sec. 58, the Lieutenant-Governor for each Province is appointed by the Governor General in Council by Instrument under the Great Seal of Canada; that by sec. 67, the Governor General in Council is likewise empowered to appoint an administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability; that by sec. 59, the Lieutenant-Governor holds office during the pleasure of the Governor General, subject however to the express condition that no Lieutenant-Governor of a Province "shall be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made"; which cause shall also be communicated by message within one week thereafter to both Houses of the Dominion Parliament if then sitting, and, if not, then within one week after the commencement of the next session of Parliament; that by sec. 60 the salaries of the Lieutenant-Governors are fixed and provided by the Parliament of Canada; and that by sec. 55, whenever a Bill passed by the House or Houses of the Legislature is presented to him for assent, the Lieutenant-Governor shall declare "according to his discretion, but *subject* to the provisions of this Act and *to the Governor General's instructions,*" either that he assents thereto in the Governor General's name, or that he withholds the Governor General's assent, or that he reserves the Bill for the signification of the Governor General's pleasure.

2. Form of Commission of Lieutenant-Governors.

The general form of commission issued to the Lieutenant-Governors of the Provinces of Canada, and under which they exercise the functions of their office, reads as follows:

"Know you, that we reposing special trust and confidence in the prudence, courage, loyalty, integrity and ability of you the said..... .....have by, and with the advice of Our Privy Council for Canada. thought fit to constitute and appoint, and We do hereby constitute and appoint you the said....., to be the Lieutenant-Governor in and over the Province of.....one of the Provinces of our Dominion of Canada, during the will and pleasure of Our Governor General of Canada.

And we do hereby authorize and empower and command you the said.....in due manner to do and execute all things that shall belong to your said command, and the trust we have reposed

in you, according to the several powers, provisions and directions granted or appointed you by virtue of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Thirtieth Year of Her late Majesty's Reign, called and known as 'The British North America Act, 1867,' and of all other Statutes in that behalf and of this our Present Commission, according to such instructions as are herewith given to you *and hereunto annexed* or which may from time to time be given to you, in respect of the said Province of.....under the Sign Manual of Our Governor General, of Our Dominion of Canada, or by order of Our Privy Council for Canada, and according to such Laws as are or may be in force within the said Province of.....

And We do hereby further appoint that so soon as you shall have taken the prescribed oaths and entered upon the duties of your office, this Our Present Commission shall supersede our Commission under the Great Seal of Canada, bearing date.....day of.....one thousand nine hundred and....., appointing.....to be the Lieutenant-Governor of the said Province of.....

In Testimony whereof We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS, Etc., Etc.

At Our Government House in Our City of Ottawa, this.....: day of.....in the year of Our Lord one thousand nine hundred and.....and in the.....year of Our Reign....."

3. Form of Instructions to Lieutenant-Governors.

It will be observed that the Commission issued to Lieutenant-Governors in terms authorizes them to perform and execute their several functions according to the provisions of the British North America Act, 1867, and all other Statutes in that behalf, and "according to such instructions as are herewith given to you and hereunto annexed or which may from time to time be given to you . . . under the Sign Manual of our Governor General of our Dominion of Canada, or by order of our Privy Council for Canada." It seems, however, that though the Commission thus expressly refers to instructions accompanying it, no instructions were, in point of fact, annexed to the Commission of a Lieutenant-Governor until 1892. This omission having been brought to his attention, His Excellency the Governor General in Council, by Order dated 16th June, 1892, (P.C. 1574) approved of a general form of Instructions to be given to the Lieutenant-Governors of the several Provinces at the time of their appointment. The form of Instructions so approved reads as follows:

"Whereas it is enacted in and by 'The British North America Act, 1867,' that for each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor General in Council by instrument under the Great Seal of Canada; and whereas, by and with the advice of

the King's Privy Council for Canada, I have, by Commission under the Great Seal of Canada, constituted and appointed.....
.....
to be Lieutenant-Governor in and over the said Province of.....
....., one of the Provinces of the Dominion of Canada, and thereby authorized and empowered and commanded him in due manner, to do and execute all things belonging to his said command and trust according to the several powers, provisions and directions granted or appointed to him by virtue of the said Act, and of all other Statutes in that behalf, and of the said Commission, according to such instructions as were with the said Commission given unto him, or which might, from time to time, be given to him in respect to the said Province of....., under my Sign Manual or by order of the King's Privy Council for Canada, and according to such laws as are or may be in force within the said Province of.....
.....

I. Now, therefore, I do by these my Instructions under my Sign Manual, by and with the advice of the King's Privy Council for Canada, declare my pleasure to be that the Lieutenant-Governor of the Province of ....., for the time being, shall, with all due solemnity, cause the said Commission under the Great Seal of Canada, appointing him Lieutenant-Governor, to be read and published in the presence of the Chief Justice for the time being or other Judge of the Supreme Court (or, as the case may be) of the said Province and of the members of the Executive Council in the said Province.

II. And I do further declare my pleasure to be that the Lieutenant-Governor and every other officer appointed to administer the Government of the said Province, shall take the oath of allegiance in the form provided by the said Act, and likewise that he or they shall take the usual oaths for the due execution of the office of Lieutenant-Governor, which oaths the said Chief Justice for the time being of the said Province (or Court, as the case may be), or in his absence, or in the event of his being otherwise incapacitated any Judge of the Supreme Court (or other Court, as the case may be) of the said Province, or in the case of emergency any one duly commissioned by me, shall and is hereby required to tender or administer unto him or them.

III. And I do authorize and require the Lieutenant-Governor, from time to time, to administer to all and every person or persons, to whom he is by the said Act directed to administer the same, the said oath of allegiance and generally to administer such other oath or oaths as he lawfully may, and as may from time to time be prescribed by any Laws or Statutes in that behalf provided.

IV. The Lieutenant-Governor is to take care that all Laws assented to by him in my name, or reserved for signification of my pleasure, thereon, shall, when transmitted by him, be fairly abstracted in the margin, and be accompanied in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such laws.

V. Whenever the Lieutenant-Governor assents to a Bill, he shall, within ten days thereafter, send an authentic copy of the Act to the Secretary of State of Canada.

VI. The Lieutenant-Governor, on receipt of a copy of an Order in Council disallowing an Act with my certificate of the date on which the Act was received by me, shall forthwith make proclamation in the said Province of such certificate, and of the disallowance of the said Act.

VII. The Lieutenant-Governor shall not quit the Province without having first obtained leave from me for so doing, under my Sign Manual, or through the Secretary of State of Canada."

4. Views as to character of Office prior to 1892.

For a period of some twenty-five years following Confederation, there was divergence of opinion amongst statesmen as well as judges as to the true legal status of the office of Lieutenant-Governor. This divergence of opinion may, no doubt, be largely ascribed to misconceptions springing from the fact that Lieutenant-Governors were not directly nominated or appointed by the Sovereign, but received their appointments from the Governor General in Council. It may also have been due, to some extent, to the influence of Sir John Macdonald, whose preference for a legislative, rather than a federal, union was well known (Corr. Sir John Macdonald, 1840-1891, by Sir Joseph Pope, p. 11, Note 1), and who was disposed to look upon the Provinces as being little more than glorified municipal institutions. As indicating the temper of his views towards the Provinces, the following extract from a letter dated October 26, 1868, from Sir John Macdonald to Brown Chamberlain, M.P., is illuminating:

"My own opinion is that the General Government or Parliament should pay no more regard to the status or position of the Local Governments than they would to the prospects of the ruling party in the Corporation of Quebec or Montreal. So long as the dual system exists, a certain sympathy will also exist. This was beneficial at the commencement of matters and should be kept up, at all events for this parliament, until the new constitution shall have *stiffened in the mould.*" (Corr. Sir John Macdonald, 1840-1891, p. 75).

There are, on the one hand, opinion and *dicta* which treated the Lieutenant-Governors as being exclusively federal officers, and not in any sense representatives of the Sovereign; and on the other hand, there are other opinions, not so numerous, which held it to be a fallacy to say that the Lieutenant-Governors, because appointed by the Governor General, did not in any sense represent the Sovereign in the Government of the Provinces.

For instance, in a despatch, dated November 7, 1872, to the Governor General of Canada, the Colonial Secretary (the Earl of Kimberley) said:

"And with reference to the question asked by Sir Hastings Doyle, and submitted by Lord Lisgar for my decision, namely, 'whether the Lieutenant-Governors are supposed to be acting on behalf of the Queen,' I have to observe that while from the nature of their appointment they represent on ordinary occasions the Dominion Government, there are nevertheless occasions (such as the opening or closing of a session of the Provincial Legislature, the celebration of Her Majesty's Birthday, the holding of a levee, etc., etc.), on which they should be deemed to be acting directly on behalf of Her Majesty, and the first part of the National Anthem should be played in their presence." (Ont. Sess. Pap. 1873, No. 67).

Further, Earl Carnarvon, Secretary of State for the Colonies, in a despatch of January 7, 1875, to the Governor General of Canada, said:

"The Lieutenant-Governors of the Provinces of the Dominion, however important locally their functions may be, are a part of the Colonial Administrative Staff, and are more immediately responsible to the Governor General in Council. They do not hold Commissions from the Crown, and neither in power nor privilege resemble those Governors or even Lieutenant-Governors of Colonies to whom, after special consideration of a personal fitness, the Queen under the Great Seal and her own hand and signet delegates portions of her prerogatives and issues her own instructions." (Can. Sess. Pap. Vol. 8 (1875), No. 11, p. 38).

Similarly in a report to the Governor General in Council, approved by Order of April 1, 1875, the then Minister of Justice, the Honourable T. Fournier, said:

"The Queen not being in any way an enacting party or power of such a Legislature, Her Majesty's name is improperly used in the provincial legislation." (Dom.-Prov. Leg. 1867-1895, p. 120).

In Appendix "A" to this memorandum are set forth extracts from various decisions of the Courts in Canada containing expressions of judicial opinion concerning the nature of the office of Lieutenant-Governor of a Province.

For *dicta* expressive of the view that the Lieutenant-Governors were not the Sovereign's representatives, or, at all events, not her direct representatives, but were rather officers of the Dominion Government, there are the following citations:

Church v. Blake (1876) 3 Cart. Cas. on B.N.A. Act, 100; per Taschereau, J. at p. 114;

Regina v. Amer (1878) 42 U.C.Q.B.R. 391, 407, 408, per Harrison, C.J.;

Lenoir v. Ritchie (1879) 3 S.C.R. 575; per Henry, J. at p. 613; per Taschereau, J. at pp. 622, 623; per Gwynne, J. at pp. 634, 635, 637;

Mercer v. Attorney-General of Ontario (1881) 5 S.C.R. 538; per Taschereau, J. at pp. 671, 672, 673; per Gwynne, J. at p. 711.

The Queen v. Bank of Nova Scotia (1885) 11 S.C.R. 1; per Taschereau, J. at p. 24;

Gibson v. McDonald (1885) 7 O.R 401; per O'Connor, J. at pp. 420, 421, 422.

Of the opinions so expressed, perhaps the most extreme was that of Gwynne, J. in Lenoir v. Ritchie (1879) 3 S.C.R. 575, where he said at p. 634:

"The Provincial Governments are, as it were, carved out of and subordinated to, the Dominion. The head of their executive Government is not an officer appointed by Her Majesty, or holding any commission from her, or in any manner personally representing her, but an officer of the Dominion Government, appointed by the Governor General, acting under the advice of a council, which the Act constitutes the Privy Council of the Dominion. The Queen forms no part of the Provincial Legislatures, as she does of the Dominion Parliament."

On the other hand, there were other judges who were disposed to regard the Lieutenant-Governors as representatives of the Sovereign for the purposes of Provincial Government. Of opinions to this effect the following are citations:

Church v. Blake (1876) 3 Cart. Cas. On B.N.A. Act, 100; per Tessier, J. at p. 105;

Mercer v. Attorney-General of Ontario (1881) 5 S.C.R. 538; per Ritchie, J. at pp. 637, 638;

Molson v. Chapleau (1883) 6 Leg. News. 222; per Papineau, J. at p. 224;

Regina v. St. Catharines Milling Co. (1886) 13 O.A.R. 148; per Burton, J.A. at pp. 165, 166.

Typical of the opinions so expressed is that of Ritchie, C. J. in Mercer v. Attorney General of Ontario, ibid supra, where the learned Chief Justice of Canada said:

"To say then that the Lieutenant-Governors because appointed by the Governor General, do not in any sense represent the Queen in the government of their Provinces, is, in my opinion, a fallacy; they represent the Queen as Lieutenant-Governors did before confederation, in the performance of all executive or administrative acts now left to be performed by Lieutenant-Governors in the Provinces in the name of the Queen."

The position was also put forcibly by Papineau, J. in Molson v. Chapleau, ibid supra, where the learned judge said:

"Now, if the Queen has withdrawn, by the federal compact, both from the legislature and executive of the provinces, and if the Lieutenant-Governors are not her representatives, and do not exercise in her name and in her stead the authority which they exercise; these provinces are no longer integral parts of the Empire. . . . Either the Lieutenant-Governors and legislators act in their own name (then they are independent of Her Majesty) or they do so in the name of Her Majesty, and then they

are her representatives. If it is right to say that Her Majesty in person does not form part of the provincial legislatures and provincial governments, it is equally right to say that she forms part of them by representation. For she cannot cease to form part of them, personally or by representation, without ceasing to be sovereign of those provinces."

5. Judicial view as to nature of Office since 1892. Any doubt that the Lieutenant-Governors of Provinces are for the purposes of Provincial Government representatives of the Sovereign was finally settled by the judgment of the Judicial Committee of the Privy Council in The Liquidators of the Maritime Bank of Canada v. The Receiver-General of New Brunswick (1892) A.C. 437. In this case it was argued that the effect of the British North America Act, 1867, had been to sever all connection between the Crown and the Provinces to make the Government of the Dominion the only Government of Her Majesty in North America; and to reduce the Provinces to the rank of independent municipal institutions. In rejecting this contention, Lord Watson, delivering the judgment of the Board, said at pp. 441 and 443:

p 441. "Their Lordships do not think it necessary to examine in minute detail, the provisions of the Act of 1867, which nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the provinces. . . .

p. 443. It would require very express language, such as is not to be found in the Act of 1867, to warrant the inference that the Imperial Legislature meant to vest in the provinces of Canada the right of exercising supreme legislative powers in which the British Sovereign was to have no share . . . . If the Act had not committed to the Governor General the power of appointing and removing Lieutenant-Governors, there would have been no room for the argument, which, if pushed to its logical conclusion, would prove that the Governor General, and not the Queen, whose Viceroy he is, became the Sovereign authority of the province whenever the Act of 1867 came into operation. But the argument ignores the fact that, by sect. 58, the appointment of a provincial governor is made by the 'Governor General in Council by Instrument under the Great Seal of Canada,' or, in other words, by the Executive Government of the Dominion, which is, by sect. 9, expressly declared 'to continue and be vested in the Queen.' There is no constitutional anomaly in an executive officer of the Crown receiving his appointment at the hands of a governing body who have no powers and no functions except as representatives of the Crown. The Act of the Governor General and his Council in making the appointment is, within the meaning of the Statute the act of the Crown, and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor General himself is for all purpose of Dominion government."

More recently in *re* The Initiative and Referendum Act, (1919) A.C. 935, it was held by the Judicial Committee of

the Privy Council that sec. 92, head 1, of the British North America Act, 1867, which empowers a Provincial Legislature to amend the Constitution of a Province "except as regards the office of Lieutenant-Governor," excludes the making of a law which abrogates any power which the Crown possesses through the Lieutenant-Governor who directly represents the Crown. Accordingly, the Board held to be invalid a provincial statute which compelled the Lieutenant-Governor to submit a proposed law to a body of voters totally distinct from the Legislature of which he was the constitutional head and rendered him powerless to prevent it from becoming an actual law if approved by those voters since the effect of such a statute was wholly to exclude the Lieutenant-Governor from the new legislative authority.

However, it may well be, as has been judicially stated, that sec. 92 (1) of the B.N.A. Act does not inhibit a statutory increase of powers and duties germane to the office of Lieutenant-Governor, as, for example, the power of commuting and remitting offences against the laws of the province or offences over which the legislative authority of a province extends: Attorney General of Canada v. Attorney General of Ontario, 20 O.R. 222; 19 O.A.R. 31; 23 S.C.R. 458.

In the case just cited, Chancellor Boyd, speaking of sec. 92 (1) "which forbids interference with the office of Lieutenant Governor," said: (20 O.R. 222, 247).

> "That veto is manifestly intended to keep intact the headship of the Provincial Government, forming, as it does, the link of federal power; no essential change is possible in the constitutional position or functions of this chief officer, but that does not inhibit a statutory increase of duties germane to the office."

This view seems to be consistent with the later decision of the Judicial Committee of the Privy Council in Attorney General for the Dominion of Canada v. Attorney General for Ontario (1898) A.C. 247, wherein it was held that a Statute of Ontario which empowered the Lieutenant-Governor of the Province to confer precedence by patents upon such members of the bar of the province as he might think fit to select, was *intra vires* of the Provincial Legislature in virtue of s. 92 (1), (4) and (14) of the British North America Act, 1867.

Perhaps the true effect of the words of exception in sec. 92 (1) of the B.N.A. Act was stated by Mr. Edward Blake, K.C., in his argument before the Ontario Court of Appeal in the Pardoning Power Case above cited (19 O.A.R. 31). Mr. Blake said:

> "This means that those elements of the constitution which can properly be deemed to be parts of the constitution relating to the office of Lieutenant-Governors are not to be changed; and for an obvious reason, because the Lieutenant-Governor is the link between the federal and the provincial, aye, and between the imperial and the provincial authority; he is the means of communication; he is the agent and conduit of imperial as well as federal connection; and, therefore, his office under the constitution, his constitutional position as a federal officer, is not to be affected."

And the Ontario Court of Appeal, 19 O.A.R. at p. 31 and the majority of the Supreme Court of Canada, 23 S.C.R., 458, affirmed him in holding the Ontario Act there in question *intra vires*, though it purported to vest certain powers, authorities and functions in the Lieutenant-Governor of Ontario.

6. Dual capacity of Lieutenant-Governors in relation to functions

It is submitted that the Lieutenant-Governor, as the head of the Executive Government of the Province (sec. 58, B.N.A. Act) and as a constituent branch of each Provincial Legislature (secs. 69, 71 and 88, B.N.A. Act), acts in two capacities, namely:—

(*a*) as the representative of the Sovereign for all purposes of provincial government, and

(*b*) as a Dominion officer in respect of the discharge of certain of his functions.

The former capacity is, as it were, overlaid by the latter capacity.

"So far as regards the internal administration of his government, he is merely a constitutional sovereign, acting through his advisers, interfering with their policy or their patronage, if at all, only as a friend and important councillor . . . . . Under responsible government he becomes the image, in little, of a constitutional King. . . . . He has to reconcile as well as he can his double function as Governor responsible to the Crown" (in Canada to the Governor General in Council) "and as a constitutional head of an executive controlled by his advisers." (Mr. Herman Merivale, for 12 years Under

Secretary of State for the Colonies, in Col. and C. pp. 649, 666, quoted with approval in "British Rule and Jurisdiction beyond the Seas," by Sir Henry Jenkyns, Parliamentary Counsel to the United Kingdom, 1902, pp. 105-6).

That a Lieutenant-Governor of a Province is, in respect of certain of his functions, a Dominion officer, seems to be incontrovertibly evident. If the act of the Governor General in Council in appointing a Lieutenant-Governor is, in effect, the act of the Sovereign (*Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* (1892) A.C. 437, at 443; *In re The Initiative and Referendum Act* (1919) A.C. 935), it is none the less the act of the Sovereign in respect of his government of Canada. Moreover, the salaries of the Lieutenant-Governors are fixed and provided by Parliament (sec. 60, B.N.A. Act, and the Salaries Act, R.S.C. 1927, cap. 182); and still more significant as indicating the capacity of the Lieutenant-Governor as a Dominion officer is the fact that he is required whenever a Bill passed by the House or Houses of the Provincial Legislature is presented to him for the Royal Assent, to "declare, according to his discretion, but *subject* to the provisions of this Act and *to the Governor General's Instructions,* either that he assents thereto in the Governor General's name or that he withholds the Governor General's assent or that he reserved the Bill for the signification of the Governor General's pleasure." In respect of these functions, a Lieutenant-Governor appears to act strictly as a Dominion officer, subject to the instructions of the Governor General in Council; but his capacity as a Dominion officer in relation to assenting to or withholding assent to a Bill passed by the House or Houses of the Provincial Legislature, and presented to him for assent, is, in actual practice, only nominal. It is recognized, and has indeed been affirmed, by the Governor General in Council (as will hereinafter appear), that in these matters the authority of the Crown in relation to Provincial Government should be exercised and administered in conformity with the settled constitutional principles of responsible government.

An additional function which is said to appertain to the office of Lieutenant-Governor, in his capacity as an officer of the Dominion, is that of publishing a proclamation signifying the disallowance by the Governor General in

Council of a provincial statute; see letters from Sir John Macdonald to Lieutenant-Governor Angers of September 18th and 22nd, 1888. (Corr. of Sir John Macdonald, 1840-1841, by Sir Joseph Pope, pp. 423-425.) In the latter of these letters Sir John Macdonald stated that having consulted with the Minister of Justice and with Sir Hector Langevin, they had concluded "that it is the duty of a Lieutenant-Governor, as a federal officer, to cause a proclamation of the disallowance to be published."

That a Lieutenant-Governor is viewed by the Imperial authorities as a federal officer seems to be clear from the proceedings connected with the dismissal in 1879 of His Honour Luc Letellier, Lieutenant-Governor of the Province of Quebec. In 1878 Mr. Letellier dismissed his Ministers on the ground that they had acted contrary to his representations, were encouraging a lavish expenditure in regard to railways, and had promoted a Bill which he deemed to be an arbitrary and illegal infringement of vested rights. He claimed in defending his conduct that his action in so dismissing his Ministers and in calling upon others to take office in their stead was purely a provincial matter affecting in no way federal interests and was not one of the causes contemplated in sec. 59 of the British North America Act as justifying the removal of a Lieutenant-Governor. In view of the importance of the precedent, the matter was referred to the Imperial Government for their consideration and instructions. Sir M. Hicks-Beach, Secretary of State for the Colonies, in a despatch dated July 3, 1879, conveyed to the Governor General of Canada the conclusions of Her Majesty's Government. In expressing the opinion of the Imperial Government on the abstract question of the functions and responsibilities of the Governor General in relation to the Lieutenant-Governor of a Province under the British North America Act, the despatch stated that:

"There can be no doubt that a Lieutenant-Governor of a Province has an unquestionable right to dismiss his Ministers if from any cause he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office, and, *for any action he may take, he is (under the 59th section of the British North America Act) directly responsible to the Governor General.* In deciding whether the conduct of a Lieutenant-Governor merits removal from office, the Governor General—as in the exercise of other powers vested in him by the Imperial

statute—must act 'by and with the advice of his Ministers.' Though the position of a Lieutenant-Governor would entitle his opinion on the subject to peculiar weight, yet her Majesty's Government do not find anything in the circumstances which would justify him in departing, in this instance, from the general rule and declining to follow the decided and sustained opinion of his Ministers who are responsible for the peace, order and good government of the Dominion to the Parliament, to which (according to the 59th section of the statute) the cause assigned for the removal of a Lieutenant-Governor must be communicated.'"

Before proceeding to a statement of the principles which ought to govern a Lieutenant Governor in (*a*) assenting to Bills, or (*b*) withholding assent to Bills, or (*c*) reserving Bills for the signification of the Governor General's pleasure, it may be noted that there are many authoritative references to the capacity of a Lieutenant-Governor as a Dominion officer. In addition to the numerous judicial references to his capcaity as a Dominion officer (to be found in the extracts set out in Appendix "A" to this memorandum), there are the following:

Order in Council of June 25, 1879, approving Report of the Minister of Justice. (Dom.-Prov. Leg. 1867-1895, p. 1204);

Order in Council of November 29, 1882. (Dom. Prov. Leg. 1867-1895, pp. 77-78);

Letters from Sir John Macdonald to Honourable J. C. Aikins, July 28, 1884; to Lieutenant-Governor Angers, September 18, September 22, 1888. (Corr. Sir John Macdonald, 1840-1891, by Sir Joseph Pope, pp. 315, 423, 425).

Todd's Parliamentary Government in the British Colonies, 2nd ed., p. 517;

Honourable Edward Blake's argument in the Pardoning Power Case in Ontario Court of Appeal; quoted in Lefroy's Canada's Federal System, pp. 26-27.

7. Principles governing assent or withholding assent to Bills, or reserving Bills:

First, as to assenting, or withholding assent, to Bills: Since Confederation the Lieutenant-Governors in the Provinces of Quebec and Ontario, while they have occasionally reserved Bills for the consideration of the Governor General, have never "withheld" the assent of the Crown to any Bill passed by the House or Houses of the Provincial Legislature. In other Prov-

inces of the Dominion it has been different. In Nova Scotia Lieutenant-Governor Archibald did on several occasions in the years 1874-1883 withhold his assent to Bills. In New Brunswick the same course was taken by Lieutenant-Governor L. A. Wilmot in 1870, 1871 and 1872; by Lieutenant-Governor Tilley in 1875 and 1877; and by Lieutenant-Governor R. D. Wilmot in 1882. (Todd's Parliamentary Government in the British Colonies, 2nd ed., p. 586).

By constitutional analogy it may be assumed that Lieutenant-Governors are not at liberty to withhold the royal assent to Bills which have passed the legislative chambers —inasmuch as the power of veto by the Crown is now practically obsolete in the mother country. Once a Bill has passed the legislative body by ministerial consent or acquiescence, it must ordinarily receive the royal sanction. The act of a Lieutenant-Governor in withholding the assent of the Crown to a Bill which had been passed by the legislative chambers—wherein a responsible Minister should be able to exercise a constitutional influence in the control of legislation—would be a difficult and delicate proceeding. It is one that must obviously be advised by some Minister who is in a position to become responsible for the same. If a Lieutenant-Governor should for any reason deem it imperative upon him to take such a course, and his Minister should not concur therein, he must be prepared to accept their resignation, and be able to form a new ministry by whom the Act proposed could be constitutionally advised and justified to the legislative chambers. Todd's Parliamentary Government in the British Colonies, 2nd ed., pp. 518, 586, 587).

These principles are in accordance with those which have, from time to time, been affirmed by the Dominion Government. In a report approved by Order in Council of 29th August, 1873, Sir John Macdonald, in expressing the opinion that certain Provincial Acts were within the competence of the Provincial Legislature and ought to have been assented to by the Lieutenant-Governor, said:

"Under the system of Government that obtains in England as well as in the Dominion and its several Provinces, it is the duty of the advisers of the executive to recommend every measure that has passed the legislature for the executive assent. . . The Ministers of the Governor General and of the Lieutenant-Governor are alike bound to oppose in the legislature, measures of which they disapprove, and if,

notwithstanding, such a measure be carried, the ministry should either resign or accept the decision of the legislature, and advise the passage of the bill. It then rests with the Governor General or the Lieutenant-Governor, as the case may be, to consider whether the Act conflicts with his instructions or his duty as an Imperial or Dominion officer—and if it does so conflict, he is bound to reserve it, whatever the advice tendered to him may be; but if not he will doubtless feel it his duty to give his assent, in accordance with advice to that effect, which it was the duty of his Ministers to give. (Dom.-Prov. Leg. 1867-1895, pp. 104-105).

In a report approved by Order of the Governor General in Council the 25th October, 1876, the Honourable Edward Blake said:

"It appears to the undersigned that as a general rule the Lieutenant-Governor should himself act with the advice of Ministers upon the question of assent. To this rule there will no doubt be, from time to time, exceptions. (Dom.-Prov. Leg. 1867-1895, p. 816.)

Further in an Order of the Governor General in Council, dated November 29, 1882, copies of which were communicated to the Lieutenant-Governors of the various Provinces, it was stated:

"Now in England the ministry of the day must of necessity have the confidence of the majority in the popular branch of the legislature, and, therefore, they generally control or rather direct current legislation. Should, however, any Bill be passed, notwithstanding their opposition or adverse opinion, they cannot advise its rejection by the Sovereign. The power of veto by the Crown is now admitted to be obsolete and practically non-existent. The expression "Le Roi ou la Reine s'avisera," has not been heard in the British Parliament since 1707 in the Reign of Queen Anne, and will in all probability never be heard again. The Ministers in such a case, if they decline to accept the responsibility of submitting the bill for the royal assent, must resign and leave to others the duty of doing so. If, notwithstanding their adverse opinion they do not think the measure such as to call for their resignation, they must submit to the will of Parliament and advise the Sovereign to give the royal assent to it." (Dom.-Prov. Leg. 1867-1895, p. 78.)

This reasoning clearly proceeds upon the theory that the Lieutenant-Governors should occupy towards their executive council and towards their local legislature, the identical relation occupied by the Governor General in Council and by the King in the United Kingdom towards their several Privy Councils and Parliaments.

Secondly, as to reserving Bills: Since Confederation, as appears from the table of reserved Bills contained in Dominion-Provincial Legislation, 1867-1895, pp. 1336-1347, and in Provincial Legislation, 1896-1920, p. 849 (and set out in Appendix "B" to this memorandum), fifty-five bills have been reserved by the Lieutenant-Governors of the

Provinces for the signification of the Governor General's pleasure. Of this number, three were Ontario Bills; four Quebec, eleven New Brunswick, twenty Manitoba; nine British Columbia, and eight Prince Edward Island.

It thus appears that the Lieutenant-Governors, as Dominion officers, have repeatedly assumed the responsibility of reserving, for the consideration of the Governor General, Bills which appeared to them to contain doubtful or objectionable provisions.

The Dominion Government have held it to be at variance with the principles of constitutional government for a Lieutenant-Governor to reserve a Bill for the pleasure of the Governor General which is "entirely within the legislative authority of the Provincial Legislature, and in which no Dominion or Imperial interests are involved." (Dom.-Prov. Leg. 1867-1895, p. 1201.)

In a report approved by Order in Council of the 29th August, 1873, dealing with certain reserved Bills, Sir John Macdonald said:

"The provision in the British North America Act, of 1867, that your Excellency may reserve a Bill for the signification of Her Majesty's pleasure, was solely made with the view to protection of Imperial interests and the maintenance of Imperial policy; and in case your Excellency should exercise the power of reservation conferred upon you, you would do so in your capacity as an Imperial officer and under the Royal Instructions. *So, in any Province the Lieutenant-Governor should reserve a Bill in his capacity as an officer of the Dominion and under instructions from the Governor General.*"

With regard to the particular Bills under consideration, Sir John Macdonald expressed the opinion that "the Lieutenant-Governor ought not to have reserved them for your Excellency's assent as he had no instructions from the Governor General in any way affecting these Bills." Sir John, accordingly, recommended that the course usually adopted with reference to local Bills reserved for the signification of the Governor General's pleasure which should not have been reserved, should be followed, namely, that no action should be taken thereon. (Dom.-Prov. Leg. 1867-1895, pp. 104, 105.)

The foregoing statement of principles was reaffirmed in a report prepared by Mr. Z. A. Lash, Deputy Minister of Justice, and concurred in by the Honourable James McDonald, Minister of Justice, approved by Order in Council of June 25, 1879. (Dom.-Prov. Leg. 1867-1895, pp. 1204-1205.)

A like statement of principles was set forth in Order in Council of November 29, 1882, copies of which were transmitted to the Lieutenant-Governors of the various Provinces. An extract from this report has already been quoted above, but the full text is of such special interest in the consideration of this topic as to be worthy of being quoted:

"The Committee in Council deem it their duty to call the attention of Your Excellency to the fact that in several provinces, bills passed by the legislature have been reserved for the Governor General's assent by their Lieutenant-Governors on the advice of their Ministers.

"This practice is at variance with those principles of constitutional government which obtain in England, and should be carried out in Canada and its provinces.

As the relations between the Governor General and his responsible advisers, as well as his position as an imperial officer, are similar to the relations of a Lieutenant-Governor with his ministers and his position *as a Dominion officer,* it is only necessary to define the duties and responsibilities of the former in order to ascertain those of a Lieutenant-Governor. Now it is clear that since the concession of responsible government to the colonies, the advisers of the Governor General hold the same position with regard to him, as the imperial ministry does with respect to Her Majesty. They have the same powers and duties and responsibilities. They ought not to have, and of right have not, any greater authority with respect to the legislation of the Canadian Parliament, than the Queen's Ministers have over the legislative action of the Imperial Legislature.

Now in England the ministry of the day must of necessity have the confidence of the majority in the popular branch of the legislature, and therefore they generally control, or rather direct, current legislation.

Should, however, any bill be passed notwithstanding their opposition or adverse opinion, they cannot advise its rejection by the sovereign.

The power of veto by the Crown is now admitted to be obsolete and practically non-existent. The expression 'Le Roi ou la Reine s'avisera,' has not been heard in the British Parliament since 1707, in the reign of Queen Anne, and will in all probability never be heard again. The ministers in such a case, if they decline to accept the responsibility of submitting the bill for the royal assent, must resign and leave to others the duty of doing so.

If, notwithstanding their adverse opinion they do not think the measure such as to call for their resignation, they must submit to the will of Parliament and advise the sovereign to give the royal assent to it.

Under the same circumstances your Excellency's advisers must pursue the same course.

The right of reserving bills for the royal assent, conferred by the British North America Act was not given for the purpose of increasing the power of the Canadian ministers, or enabling them to evade the constitutional duty above referred to.

This power was given to the Governor General as an imperial officer and for the protection of imperial interests. It arises from our position as a dependency of the empire, and to prevent legislation which in the opinion of the Imperial Government is opposed to the welfare of the empire or its policy.

For the exercise of this power the Governor General, with or without instructions from Her Majesty's Government, is responsible only to the

British Government and Parliament, and should the Canadian Government or Parliament deem at any time that the power has been exercised oppressively, improperly, or without due regard to the interests of the Dominion, their only course is to appeal to the Crown and eventually to the British Parliament for redress.

As has already been stated, the same principles and reasons apply, *mutatis mutandis,* to provincial governments and legislatures.

The Lieutenant-Governor is not warranted in reserving any measure for the assent of the Governor General on the advice of his ministers. He should do so in his capacity of a *Dominion officer only,* and on instructions from the Governor General. It is only in a case of extreme necessity that a Lieutenant-Governor should without such instructions exercise his discretion as a Dominion officer in reserving a bill. In fact, with facility of communication between the Dominion and Provincial governments such a necessity can seldom if ever arise.

If this minute be concurred in by your Excellency, the committee recommend that it be transmitted to the Lieutenant-Governors of the several provinces of the Dominion for their instruction and guidance.": Dom.-Prov. Legn. 1867-1895, pp. 77-78.

The principles stated above concerning the circumstances under which the Lieutenant-Governor would be justified in withholding the royal assent to a bill, or reserving a bill for the signification of the Governor General's pleasure, have not gained general acceptance. For instance, Professor A. Berriedale Keith in "Responsible Government in the Dominions," revised 2nd ed., Vol. 1, p. 564, said:

"The modern usage is certainly the completion of legislation and then disallowance, but there is no reason to suppose that either reservation or refusal of assent is obsolete, still less is there ground to accept either the dictum of Sir J. Macdonald that a Lieutenant-Governor should never refuse assent on minister's advice or Mr. Todd's conclusion that he should only refuse assent, if at all, on that advice. If the Ministers find that an enactment is mistaken, they can quite properly take the responsibility of telling the Lieutenant-Governor so, and facing Parliament on the issue; on the other hand, if the Legislature is about to pass an unwise Bill offending Imperial or Dominion interests vitally, the Dominion Government would be lacking in a sense of duty if it did not forbid assent, if the matter were such that enactment might result in irreparable injury, for it must be remembered that an Act ceases to be valid from the date of disallowance (Wilson v. Esquimault & Nanaimo R. Co. (1922) 1 A.C. 202), but the validity of matters already done under it is not thereby affected."

8. Is the Power of the Lieutenant Governor to reserve Bills still a subsisting Power?: The British North America Act, 1867, by sections 55 and 57, provides, in effect, that the Governor General may, according to his discretion, withhold the royal assent to a bill duly passed by the Houses of the Dominion Parliament and reserve the same for the signification of the Sovereign's pleasure, and that any Bills so reserved for the signification of the royal pleasure lapses

unless within two years from the day on which it was presented to the Governor General for the royal assent the Governor General, by speech or message to each of the Houses of the Dominion Parliament, or by a proclamation, signifies that the Bill has received the royal assent. The said section reads as follows:

"55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserved the Bill for the Signification of the Queen's Pleasure."

"57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Office to be kept among the Records of Canada."

By section 90 of the British North America Act, 1867, the provisions of sections 55 and 57, *inter alia,* are made applicable "to the Legislatures of the several Provinces as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada."

Making the substitutions so directed, sections 55 and 57, in their application to provincial proceedings should, it seems, read as follows:

"55. Where a Bill passed by the House or Houses of the Legislature is presented to the Lieutenant-Governor of the Province for the Governor General's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to the Governor General's Instructions, either that he assents thereto in the Governor General's Name, or that he withholds the Governor General's Assent, or that he reserves the Bill for the Signification of the Governor General's Pleasure."

"57. A Bill reserved for the Signification of the Governor General's Pleasure shall not have any Force unless and until within One Year from the Day on which it was presented to the Lieutenant-Governor for the Governor General's Assent, the Lieutenant Governor signifies, by Speech or Message to the House, or, if more than one, to each of the Houses of the Legislature or by Proclamation, that it has received the Assent of the Governor General in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of the House, or of each House, if more than one, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of the Province."

The plain effect of these sections is to vest in the Lieutenant-Governor of the Province power, in relation to a Bill presented to him for assent, to declare "according to his discretion, but subject to the provisions of this Act and the Governor General's Instructions," *inter alia,* " that he reserves the Bill for the signification of the Governor General's pleasure "; and to provide that a Bill so reserved shall not have any force unless and until within one year from the day on which it was presented to the Lieutenant-Governor for assent, the latter signifies by speech or message to the House or Houses of the Legislature, or by proclamation, that it has received the assent of the Governor General in Council.

The Imperial Conference of 1926 declared, in relation to the United Kingdom and the Dominions, that,

" They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

The Conference recognized, however, that existing administrative, legislative and judicial forms were not wholly in accord with the position so described. To carry into detail the principle of the declaration above quoted, a Conference of experts (convened on the recommendation of the Imperial Conference of 1926) reported in 1929. The Report is entitled: " Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929," and with minor changes (not material to the present discussion), the recommendations set out in the said Report were approved by the Imperial Conference of 1930, and culminated, so far as legal changes are concerned, in the enactment of the Statute of Westminster, 1931.

To the discretionary power conferred on the Governor General by section 55 of the British North America Act of reserving a bill duly passed by the Houses of the Parliament of Canada in order that His Majesty's pleasure (signified under sec. 57 of the British North America Act on the advice of His Imperial Ministry) may be taken

thereon, the recommendations set out in paragraphs 32 and 36 of the Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929, and approved by the Imperial Conference of 1930 (see Summary of Proceedings, p. 18) are applicable. These recommendations read as follows:

"32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established, first, that the power of discretionary reservation, if exercised at all, can only be exercised in accordance with the constitutional practice of the Dominion governing the exercise of the powers of the Governor General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the King to give the Governor General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned."

"36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation."

No request has ever been made by Canada to the Government of the United Kingdom for the enactment by the Parliament of the United Kingdom of the necessary legislation to repeal the provisions of the British North America Act relating to reservation of bills passed by the Houses of the Parliament of Canada; and, indeed, the recommendations of the O.D.L. Conference strictly rendered unnecessary any amendment of the British North America Act. All that those recommendations, in substance, really involved was recognition of the fact that the Governor General's power of discretionary reservation can be exercised, if at all, only upon the advice of His Majesty's Canadian Ministry, and that, as regards the signification of the King's pleasure concerning a reserved Bill, the right to advise His Majesty had been transferred from His Majesty's Ministers at Westminster to His Majesty's Ministers at Ottawa: that is all. The existing position, so far as regards the right of reservation so provided by the British North America Act, is, therefore, defined by the recommendations set out in paragraph 32 of the Report of the O. D. L. Conference, 1929, above quoted, which, as already stated, was formally approved by the Imperial Conference of 1930. As the principles enunciated in that paragraph rank merely as

conventions of the Constitution, it follows that the power of reservation of bills of the Dominion Parliament is still legally intact, and that, from a constitutional point of view, all that can be said is that the power has become conventionally obsolete.

It is probable that the Government of the Province of Alberta will challenge the existence of the Lieutenant-Governor's power of reservation of bills passed by the Legislative Assembly of the Province on grounds similar to those upon which that Government has, in fact, challenged the existence of the power of the Governor General-in-Council to disallow provincial legislation, namely, that because the Governor General's power of reservation can no longer be constitutionally exercised in respect of bills passed by the Houses of Parliament of Canada, it follows, as a consequence, that the Lieutenant-Governor's power of reservation of bills passed by the Legislative Assembly of the Province can no longer be constitutionally exercised. This reasoning involves, it is submitted, a glaring *non sequitur,* and is demonstrably unsound for the following reasons, namely:

I. The Governor General's power of reserving bills passed by the Houses of Parliament of Canada for the signification of the pleasure of His Majesty in Council has fallen into disuse only through the emergence and operation of constitutional conventions. These conventions consisting (as they do) merely of maxims or practices which, though they regulate the ordinary conduct of the Crown, of Ministers or other persons under the Constitution, are not in reality laws at all, since they are not enforced or recognized by the courts, but are only a body of constitutional or political ethics: Dicey's Law of the Constitution, 8th ed., pp. 423, 424, 426, 431.

The conventions which have emerged from the approval by the Imperial Conference of 1930 of the recommendations set out in the report of the O. D. L. Conference of 1929, affect the position of the Dominion only as a unity *vis-a-vis* the United Kingdom. In other words, they affect only the inter-imperial relations of the Dominion: they have no application whatever to the internal or Dominion-Provincial relations. The Imperial Conference is merely a consultative, not a legislative, body. It has no authority, and never has professed to exercise any authority, to alter or

modify the internal relations and adjustments of legislative power existing under the British North America Act, 1867, between the Dominion Government on the one hand, and the Provinces on the other. Nor has the Dominion Government itself considered that it had any authority to consent to or to bring about constitutional changes which would affect the position of the Provinces under the British North America Act without previous consultation. Of these facts striking evidence is afforded by the Report of the Imperial Conference of 1930, pp. 17-18, where it is recorded that owing to certain representations which had been received by the Government of Canada from the Canadian Provinces, it was necessary to provide an opportunity for the Canadian Government to take such action as might be appropriate to enable the Provinces to present their views, and further to provide for the extension of the sections of the proposed Statute of Westminster to Canada, or for the exclusion of Canada from their operation, after the Provinces had been consulted; and by the proceedings of the Dominion-Provincial Conference held in Ottawa in April, 1931, which resulted in the Dominion and Provincial representatives unanimously agreeing upon the terms of a section to be inserted in the proposed Statute of Westminster.

II. The Statute of Westminster, 1931; provides by sections 2 and 7 as follows:

"2. (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominoin.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively."

Said section 2, if it had stood absolutely and unqualified, would have had the effect of vesting in the Parliament of Canada alone the power to repeal or amend the British North America Acts, 1867 to 1930. However, the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929, by which the draft sections of the proposed Statute of Westminster were prepared, recognized the desirability of making it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in the existing position in this respect, and recommended the inclusion in the said Act of the following draft section:

"Nothing in this Act shall be deemed to confer any power to repeal or alter the constitution Acts of the Dominion of Canada . . . otherwise than in accordance with the law and constitutional usage and practice heretofore existing": See report of the said Conference at p. 23.

The Provinces of Canada were not content with this provision, and at a Dominion-Provincial conference held in Ottawa in April, 1931, the representatives of the Dominion and Provincial Governments agreed upon the terms of a draft section which was later embodied as section 7 in the Statute of Westminster, 1931.

The plain effect of subsection 1 of section 7 is to preclude the exercise of any of the powers conferred by the statute (in particular the power conferred by sec. 2) for the repeal, amendment or alteration of the British North America Acts, 1867 to 1930; and by subsection 3 (in order, as it were to make assurance doubly sure) it is made clear that neither the Dominion Parliament nor the Provincial Legislatures are enabled by the statute to legislate on matters not under the constitution within their power already.

This view of the effect of section 7 is borne out by the judgment of the Judicial Committee in *British Coal Corporation* v. *The King* (1935) A.C. 500, 520, where the Board (speaking by Lord Sankey, L.C.) said:

"It is true that before the Statute (Statute of Westminster), the Dominion Legislature was subject to the limitations imposed by the Colonial Laws Validity Act and by s. 129 of the Act (British North America Act, 1867), and also by the principle or rule that its powers were limited by the doctrine forbidding extra-territorial legislation, though that is a doctrine of somewhat obscure extent. But these limitations have now been abrogated by the Statute (Statute of Westminster). *There now remain only such limitations as flow from the Act (British North America*

Act, 1867) itself, the operation of which as affecting the competence of Dominion legislation was saved by s. 7 of the Statute (Statute of Westminster), a section which excludes from the competence of the Dominion and Provincial Parliaments any power of 'repeal, amendment or alteration' of the Act. But it is well known that s. 7 was inserted at the request of Canada and for reasons which are familiar."

The Lieutenant-Governor's power of reserving bills passed by the Legislative Assembly of a Province for the signification of the pleasure of the Governor General in Council, conferred by section 90 and by adaptation, sections 55 and 57 of the British North America Act, is thus not only legally unaffected, but legally conserved by the provisions of the Statute of Westminster, 1931. It is a statutory power in full vigour, and it cannot be said to have become inoperative through non-user. For even if it were the case (and it is not the case) that this power had never been exercised, or had been infrequently exercised, in respect of provincial bills, the continued legal existence of the power and the legal right of the responsible authorities, in the exercise of a sound discretion, to exercise it would be wholly unaffected by that fact. "It is," as Lord Hatherley, L.C., said in *Hebbert* v. *Purchas* (1871) L.R. 3, P.C. 605, 650, "quite true that neither contrary practice nor disuse can repeal the positive enactment of a statute," or, as was said by the Court of King's Bench in *White* v. *Boot* (1788) 2 T.R. 274, 275, "An Act of Parliament cannot be repealed by non-user, notwithstanding any practice that may have obtained to the contrary." If the Lieutenant-Governor's power of reservation cannot be said to have become inoperative through non-user, still less can the exercise of the power be said to be restrained by any constitutional conventions of which there is any record or knowledge.

III. In *re* the Initiative and Referendum Act, 1919 A.C. 935, the Judicial Committee of the Privy Council held that the British North America Act, 1867, section 92, head 1, which empowers a Provincial Legislature to amend the Constitution of the Province "except as regards the office of Lieutenant-Governor," excludes the making of a law which abrogates any power which the Crown possesses through the Lieutenant-Governor, who directly represents

the Crown. In delivering the judgment of the Board, Lord Haldane said at p. 943:

> "The references their Lordships have already made to the character of the office of Lieutenant-Governor, and to his position as directly representing the Sovereign in the Province, renders natural the exclusion of his office from the power conferred on the Provincial Legislature to amend the constitution of the Province. The analogy of the British Constitution is that on which the entire scheme is founded, and that analogy points to the impropriety, in the absence of clear and unmistakable language, of construing sec. 92 as permitting the abrogation of any power which the Crown possesses through a person who directly represents it. For when the Lieutenant-Governor gives to or withholds his assent from a bill passed by the Legislature of the province, it is in contemplation of law the Sovereign that so gives or withholds assent."

There is in the foregoing passage explicit and unequivocal recognition of the power of the Lieutenant-Governor to give or withhold assent to bills passed by the legislative assembly of the province; and there is also in that passage, it is submitted, implicit recognition of the power of the Lieutenant-Governor to reserve Bills for the signification of the pleasure of the Governor General in Council. For this power is, like the power to give or withhold assent, a power which the Crown possesses through the Lieutenant-Governor who directly represents it. It depends for its existence upon the same enactment (sec. 90 of the British North America Act) as the power to give or withhold assent to Bills. It follows, therefore, that if the power of the Lieutenant-Governor to give or withhold assent be a subsisting power, so also is the power to reserve Bills. Both are derived from, and owe their vigour to, the same source.

IV. That the office of Lieutenant-Governor of the Province of Alberta (to refer to no other of the Lieutenant-Governors), and in particular his power to reserve Bills for the signification of the pleasure of the Governor General in Council passed by the Legislative Assembly of the Province, were considered by the Dominion Government to be wholly unaffected by the resolutions of the Imperial Conference of 1926 and 1930, or by the enactment of the Statute of Westminster, 1931, appears from the terms of the Instructions issued to all Lieutenant-Governors of the Province of Alberta, since its establishment in 1905, including (since the advent to office of the present Government of that Province in September, 1935) the Lieutenant-Governors since that date, namely, His Honour Lieutenant-Colonel

P. C. H. Primrose, appointed October 1, 1936, and His Honour John C. Bowen, appointed March 20, 1937, and still holding office.

Paragraph 4 of the Instructions, annexed to the Commission of each of these Lieutenant-Governors, read as follows:

> *"The Lieutenant-Governor is to take care that all laws* assented to by him in my name, or *reserved for signification of my pleasure thereon,* shall, when transmitted by him, be fairly abstracted in the margin, and be accompanied in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws."

V. The legislation of the Province of Alberta itself contains explicit recognition of the continued existence of the Lieutenant-Governor's power to reserve bills passed by the Legislative Assembly of the Province for the signification of the Governor General's pleasure thereon. The Statutes Act, chapter 2 of the Revised Statutes of Alberta, 1922, provides by sec. 4 as follows:

> "4. (1) The Clerk of the Legislative Assembly shall indorse on every Act immediately after the title of such Act, the day, month and year when the same was by the Lieutenant-Governor assented to or reserved by him for the assent of the Governor General; and in the latter case the Clerk shall indorse thereon the day, month and year when the Lieutenant-Governor has signified either by speech or message to the Legislative Assembly or by proclamation, that the same was laid before the Governor General and that the Governor General was pleased to assent to the same; and such indorsement will be taken to be a part of such Act.
>
> " (2) Every Act of the Province whenever its commencement is not otherwise provided for shall, if it is not reserved, come into and be in force on and from the first day of July following the day on which it was assented to, and if it has been reserved and afterwards assented to then on and from the tenth day after the publication in The Alberta Gazette of the proclamation announcing such assent, or on and from the said first day of July, whichever date last occurs."

VI. The resolutions adopted by the conference of delegates of the British North American Provinces at Quebec in October, 1864 (commonly referred to as the Quebec Resolutions), as revised by the delegates from the different provinces in London in 1866, have on more than one occasion been referred to in judgments of the Judicial Committee as embodying the framework of the scheme of union upon which was largely founded the provisions of the British North America Act, 1867: Attorney General for the Commonwealth of Australia v. Colonial Sugar Refining Co. Ltd. (1914) A.C. 237, 252-253; John Deere Plow Co.

v. Wharton (1915) A.C. 330, 338; In re The Initiative and Referendum Act (1919) A.C. 935, 940; Great West Saddlery Co. v. The King (1921) 2 A.C. 91, 115-116; Edwards v. Attorney General for Canada (1930) A.C. 124, 135-136; In re The Regulation and Control of Aeronautics in Canada (1932) A.C. 54, 70; See also In re Companies Act (1913) 48 S.C.R. 331, 362, 462. It seems, therefore, to be legitimate, at any rate "as a matter of historical curiosity" (Great West Saddlery Co. v. The King, supra), to refer to those resolutions and to the views expressed by the Government of the United Kingdom of that time and by leading Canadian statesmen and Fathers of Confederation in regard to them, so far as those resolutions and the views so expressed can justly be considered to throw light upon the intention of the framers of the British North America Act, 1867, in relation to the topic now under discussion.

The power of reservation, like the complementary power of disallowance, was an integral and important feature of the scheme of union embodied in those resolutions. This power was expressly provided for in Article 50 of the Quebec Resolutions of 1864: Pope's Confederation Documents, p. 48. It was carried, in identic terms, into the Resolutions as revised by the Conference of delegates of the British North American Provinces held in 1866 at the Westminster Palace Hotel in London, as Article 49: Pope's Confederation Documents, p. 107. This Article reads as follows:

"49. Any Bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and *any Bill of the Local Legislatures may in like manner be reserved for the consideration of the Governor General.*"

In the rough draft of the Bill for the union of the British North American Colonies prepared by the London Conference, effect was given to Article 49, so far as regards Bills of the Local Legislatures, by section 34, reading, in part, as follows:

"No Bill which shall be reserved by the Governor for the consideration of the Governor General shall have any force or authority until the Governor General shall signify his assent thereto and the proclamation thereof made within the Province by the Governor of the Province for which the Bill has been passed:" Pope's Confederation Documents, p. 130.

In the fourth draft of the Bill more elaborate provision was made for the power of reservation in relation to Bills of Local Legislatures by sections 118 and 120 (Pope's

Confederation Documents, pp. 208-209), reading as follows:

"118. Where a bill passed is presented to the Lieutenant-Governor for his assent, he shall declare according to his discretion, but subject to the provisions of this Act, either that he assents thereto or that he withholds his consent, or that he reserves the Bill for the sginification of the pleasure of the Governor General."

"120. A Bill reserved for the signification of the Governor General's pleasure shall not have any force unless and until within one year from the day on which it was reserved, the Governor General signifies to the Lieutenant-Governor, or by proclamation that it has received the assent of the Governor General in Council; an entry of every such signification or proclamation when transmitted by message from the Lieutenant-Governor, shall be made in the Journals of each House, as the case may be."

In the final draft of the said Bill these sections were omitted, and, instead, it was provided by section 93:

"The Provisions of Part V of this Act shall extend and apply to the Legislatures of the several Provinces as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof": Pope's Confederation Documents, p. 232.

The provisions of Part V (sections 54 to 58, inclusive) included in sections 56 and 58 the provisions applicable to the Parliament of Canada in respect of reservation of Bills, and the signification of pleasure on Bills reserved: Pope's Confederation Documents, pp. 224, 225.

Said section 93 of the final draft of the Bill consequently became the prototype of section 90 of the Bill as finally passed by the Parliament of the United Kingdom.

The Resolutions, as well as the rough draft and the fourth draft of the Bill, thus manifested, in express terms, the intention of the framers of the British North America Act to vest in the Lieutenant-Governor of each Province the power of reservation, and serve to remove any doubt (if there otherwise were any doubt) as to the intent of section 90 of the British North America Act, 1867.

9. Extent of powers of Lieutenant-Governor.

The Lieutenant-Governor of a Province being the representative of the Sovereign for all purposes of provincial government, the question remains, how far and in what manner he is or may be vested with the power or duty of exercising the royal prerogative?

The answer to this question appears to be governed by the following principles:

(1) The prerogative of the Sovereign, when it has not been expressly limited by a local law or statute, is as extensive in His Majesty's Overseas Dominions and Colonial Possessions as in Great Britain: *The Liquidators of the Maritime Bank* v. *Receiver General of New Brunswick,* (1892) A.C. 437, 441; *Exchange Bank of Canada* v. *The Queen,* 11 A.C. 157; *Regina* v. *Bank of Nova Scotia,* 11 S.C.R. 1; in *Re* Bateman's Trust, 15 Equity, 255.

(2) On the cession of Canada to Great Britain in 1763, the Crown of England became possessed of all legislative and executive powers within the country so ceded to it, and save so far as it has since parted with those powers by legislation, royal proclamation, or voluntary grant, it is still possessed of them; the British Government (and Parliament) might delegate those powers to the Governor or Government of one of the colonies either by a royal proclamation, which has the force of a statute, or by a statute of the British Parliament or by statute of a local Parliament to which the Crown has assented, and if this delegation has taken place the depository or depositories of the executive and legislative powers and authority of the Crown can exercise those powers and that authority to the extent delegated as effectively as the Crown itself could have exercised them: *Attorney General of Canada* v. *Cain* (1906) A.C. 542.

(3) The powers distributed between the Dominion on the one hand, and the Provinces on the other hand, " cover the whole area of self-government within the whole area of Canada," and " it would be subversive of the entire scheme and policy of the Act to assume that any point of internal self-government was withheld from Canada ": *Attorney General for Ontario* v. *Attorney General for Canada* (1912) A.C. 571, 581, 583, 584; *British Coal Corporation* v. *The King,* (1935) A.C. 500, 517.

(4) The powers so conferred endowed the Dominion Parliament and the Provincial Legislatures, within their respective spheres, with " authority as plenary and as ample . . . . as the Imperial Parliament in the plenitude of its power possessed and could bestow ": *Hodge* v. *The Queen,* 9 A.C. 117, 132; In *re* Initiative and Referendum Act (1919) A.C. 934, 935, 942; *Croft* v. *Dunphy* (1933) A.C. 156, 163-4. It would seem to be within the legislative competence of the Provincial Legislatures to regulate or

prohibit the prerogative right of the King in Council to entertain appeals from provincial courts in civil matters to the same extent as it was held to be within the competence of the Dominion Parliament to regulate or prohibit appeals to the King in Council in criminal matters: *British Coal Corporation* v. *The King* (1935) A.C. 500, 521, 522. But, on the other hand, section 92, head 1 of the British North America Act, which empowers a provincial legislature to amend the Constitution of a Province "except as regards the office of Lieutenant-Governor," excludes the making of a law which abrogates any power which the Crown possesses through the Lieutenant Governor who directly represents the Crown: In *re* Initiative and Referendum Act (1919) A.C. 934.

(5) A Colonial Governor under the British system is not a viceroy; but is vested with authority limited by the terms of His Commission and Instructions, and, of course, by the terms of any statute conferring authority upon him or regulating his powers: *Musgrave* v. *Pulido* (1879) 5 A.C. 102; *Bonanza Creek Gold Mining Company* v. *The King* (1916) 1 A.C. 566, 585, 586. For the measure of the powers of a Lieutenant-Governor, as regards the exercise of the royal prerogative, the terms of his Commission and Instructions and of the British North America Act itself must be looked to: *Bonanza Creek Gold Mining Co.* v. *The King* (1916) 1 A.C. 566, 585, 586, 587. By the terms of his Commission, the Lieutenant-Governor is merely authorized and empowered "to do and execute all things that shall belong to your said command and the trust we have reposed in you . . . . according to the several powers, provisions and directions granted or appointed you by virtue of the Act of Parliament of the United Kingdom of Great Britain and Ireland, passed in the Thirtieth Year of Her late Majesty's Reign, called and known as 'The British North America Act, 1867,' and of all other Statutes in that behalf and of this our Present Commission, according to such instructions as are herewith given to you, *and hereunto annexed* or which may from time to time be given to you, in respect of the said Province of ..... under the Sign Manual of Our Governor General of Our Dominion of Canada, or by order of Our Privy Council for Canada, and according to such laws as are or may be in force within the said Province of ....."

There are several provisions of the British North America Act under which the Lieutenant-Governor's power to exercise the prerogative of the Sovereign is expressly recognized, as, for instance, section 82, which empowers him in the Sovereign's name to summon the Legislatures of Ontario and Quebec; and section 72, which authorizes the Lieutenant-Governor of Quebec to appoint the members of the Legislative Council in the Sovereign's name. Furthermore, it was held in *Bonanza Creek Gold Mining Co.* v. *The King* (1916) 1 A.C. 566, 580, 581, that in virtue of section 64 and 65 of the British North America Act, the exercise of the prerogative power of the Sovereign to incorporate companies, so far as provincial objects required its exercise, became vested in the Lieutenant-Governors to whom Provincial Great Seals were assigned as evidences of their authority. Again in *Liquidators of the Maritime Bank of Canada* v. *Receiver General of New Brunswick* (1892) A.C. 437, it was held that, in virtue of the provisions of the British North America Act, the prerogative right of the Crown to be paid in priority to other creditors with debts of equal degree in the administration of a common debtor's estate appertained to the Crown in the right of each Province; and it was further held, in this connection, that the Lieutenant-Governor was as much the representative of the Crown for provincial purposes as the Governor General for Dominion purposes.

(6) The distribution of executive authority under the British North America Act, 1867, in substance follows the distribution under that Act of legislative authority, so that the two kinds of authority are correlative: *Bonanza Creek Gold Mining Company* v. *The King* (1916) 1 A.C. 566, 586, 587. It has been held, for instance, that the Provincial Legislature can properly confer power on the Lieutenant-Governor to pardon offences against provincial legislation: *Attorney General for Canada* v. *Attorney General for Ontario,* 23 S.C.R. 458, affirming, 19 O.A.R. 31 and 20 O.R. 222. So, also, it was held in the Queen's Counsel Case (*Attorney General for the Dominion of Canada* v. *Attorney General for the Province of Ontario*) (1898) A.C. 247, that the Legislature of Ontario had full power to confer upon the Lieutenant-Governor the right to appoint Queen's Counsel, and to regulate precedence at the Bar, in virtue of its legislative authority to amend the Constitution (s. 92 (1)), appoint officers (s. 92 (4)), and regulate the

administration of justice in the province (s. 92 (14)). Then, again, the Judges of the Supreme Court of Nova Scotia, in the Great Seal Case, in 1877, pointed out that Her Majesty in assenting (through the Governor General) to certain Provincial Acts authorizing "Her Lieutenant-Governor" to exercise her prerogative right in the use of the Great Seal in and for the province—"to the extent in which it is necessarily conferred on that high officer by the statute"—did expressly delegate to and empower Lieutenant-Governors to exercise certain prerogative rights appropriate to the office of the representative of the Sovereign in the particular province: Can. Sess. Pap. 1877, No. 86, p. 36; Todd's Parliamentary Government in the British Colonies, 2nd ed., p. 596.

(7) The prerogatives of the Crown, in relation to territorial revenues, are reserved to the Provinces by s. 109 of the British North America Act, 1867. These prerogatives include the right to escheat: (*Attorney General of Ontario* v. *Mercer,* 8 A.C. 767), to precious metals: (*Attorney General of British Columbia* v. *Attorney General of Canada,* 14 A.C. 198), and to *bona vacantia:* (*The King* v. *Attorney General of British Columbia* (1924) A.C. 215).

(8) Several provisions of the British North America Act have been held to show clearly that all prerogative functions and powers not specifically bestowed by its provisions upon the Governor General or Lieutenant-Governor, or reserved to the Dominion or the Provinces, remain vested in the Sovereign. Thus, by sec. 9, the executive government and authority over Canada is declared to continue and be vested in the Sovereign; by sec. 14 is declared the power of the Sovereign to authorize the Governor General to appoint deputies; by sec. 15, the command of the naval and military forces continues and is vested in the Sovereign, and by sec. 16, until the Sovereign otherwise directs, the seat of Government shall be at Ottawa. "These and other provisions of the British North America Act," said the Judicial Committee in the Bonanza Creek Gold Mining Case (1916) A.C. 566, at 587, "appear to preserve prerogative rights of the Crown which would pass if the scheme were that contended for, and to negative the theory that the Governor General is made a Viceroy in the full sense, and they point to the different conclusion that for the measure of his powers the words of his commission and the statute itself must be looked to." C.P.P.

APPENDIX "A"

Judicial Opinions Concerning the Office of Lieutenant-Governor of a Province

Ex Parte Clement Arthur Dansereau, (1875) 19 L.C.J. 210.

Ramsay J., delivering the judgment of the Court of Queen's Bench (composed of Dorion, C. J., Monk, Taschereau, Ramsay and Sanborn, JJ.) said at p. 215:

"They are markedly called legislatures in contradistinction to Parliament. The Queen forms no part of these Legislatures, although through her representative the Governor General she appoints the Lieutenant-Governors; and I take it she could not in her own person sanction a bill of a local legislature, although she names the officer who shall perform this duty, a bit more than she could perform the duties now devolving on me, acting under her commission and by her authority"

Church v. *Blake ((1876) 1 Q.L.R. 177, 180-182; (1876) 2 Q.L.R., 236; sub nom. Attorney General of Quebec* v. *Attorney General of the Dominion) 3 Cart. Cases on B.N.A. Act, 100.*

Tessier, J., at p. 105:

"It is vain, therefore, to argue on the ground that it is the Governor-General and not the Lieutenant-Governor who is the Queen's representative. This is true in regard to the special attributes of royalty which Her Majesty can delegate and confer by and in virtue of her royal prerogative and instructions, but it is not true in regard to those matters over which Her Majesty the Queen has no longer any direct power, such as the public lands and the rights of property, and civil rights in each Province. The name of Her Majesty can be used in the administration of justice and to enforce the rights of property of the Provincial government, because this is a part of the sovereign authority conferred on the Provincial governments, and which they have the right to exercise in the name of Her Majesty. . . . .

It is said that the Lieutenant-Governor does not represent Her Majesty in the same way as does the Governor General. This is true in a general sense, but not in regard to the special attributes given to the Lieutenant-Governor by the Imperial Act. In these he is as truly the representative of the Sovereign as is the Governor General in those which belong to him; otherwise Legislative Councillors would be persons of more importance and nearer royalty than the Lieutenant-Governor, because sect. 72 says they shall 'be appointed by the Lieutenant-Governor, in the Queen's name,' and those so appointed would find themselves above the power which in reality selects them. This would be a curious anomaly.

Taschereau, J. at 114:

"Now, under our constitution, the sovereignty is at Ottawa. It is only there that Her Majesty is directly represented. It is only in relation to the Dominion that the 9th sect. of the B.N.A. Act says, 'The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.' And when it is a question of the legislative power, it is of the Federal Parliament only, and in no sense of the Provincial Legislature, that the Queen forms a part. 'There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons,' says sect. 17 of the Act. This is in reference to the Federal Parliament. Now, are the Provincial Legislatures composed of the Queen and one or two Houses? By no means. 'There shall be a Legislature for Ontario, consisting of the *Lieutenant-Governor* and of one House;' sect. 69. 'There shall be a Legislature for Quebec, consisting of the Lieutenant-Governor and of two Houses;' sect. 71.

For the Parliament of the Dominion, the *Queen* and two Houses; for the Legislature of Quebec, the *Lientenant-Governor* and two Houses.

The Lieutenant-Governors in each Province sometimes act for and in the name of Her Majesty, in those *exceptional* cases where the power is given by the B.N.A Act. But the Governor General alone is the direct representative of Her Majesty in and for the whole Dominion, and to him alone, as such representative, is entrusted the exercise of the royal prerogatives, within the limits fixed by the constitution (and this constitution *for the Dominion* is partly written and partly unwritten), either resulting from our dependence on England, or still further prescribed by the special instructions which Her Majesty is pleased to give him. There is only one sovereignty for the whole Dominion, and this sovereignty resides in the federal executive power."

Regina v. *Amer,* (1878) 42 U.C.Q.B.R., 391.

Harrison, C.J. at 407, 408:

"There still remains the question as to where, since confederation, p. 407.
prerogative power (to issue special commissions of Oyer and Terminer, and General Jail Delivery) exists.

The B.N.A. Act, in sec. 9, enacts that the Executive Government and authority of and over Canada 'is hereby declared to continue and be vested in the Queen.'

The power being a prerogative one, can only be exercised/by the p. 408.
Queen or her representative. The Governor General of Canada is the only executive officer provided for by the Act who answers this description."

Lenoir v. *Ritchie* (1879) 3 S.C.R. 575.

Henry, J. at p. 613:

"The argument of this question, however, is unavailable, for the Queen has not signified her assent to the Local Act in question. By the provisions of section 90 of the Imperial Act the Governor General, and not the Queen, assents to Local Acts made in his name as provided. The Lieutenant-Governors are appointed not by the Queen, but by the Governor General in Council. It cannot, therefore, be successfully contended that the Queen has assented to the Local Act in question; nor can it be with greater success contended, that by assenting to it the Governor General had any power in doing so to interfere with the royal prerogative (i.e., to appoint Queen's Counsel) in question.

Taschereau, J. at 622, 623:

p. 622. "But, said the appellants, Her Majesty has assented to this Act of the *Nova Scotia* Legislature. This, in my opinion, is a grievous error. Her Majesty does not form a constituent part of the Provincial Legislatures, and the Lieutenant-Governors do not sanction their Bills in Her Majesty's name."

* * * * * *

p. 623. "I really do not see on what the appellants can rely to support the contention that Her Majesty has sanctioned the Act now under consideration. It seems to me that the theory that the Queen is bound by certain statutes because she is a party thereto can have no application whatever to the Provincial statutes. In the Federal Parliament, the laws are enacted by the Queen, by and with the advice and consent of the Senate and the House of Commons. Not so in the Provinces. Their laws are enacted by the Lieutenant-Governors and the Legislatures. The Governor General is appointed under the Royal Sign-Manual and Signet; the Lieutenant-Governors are not even named by the Governor General, but by the Governor General in Council. *They are officers of the Dominion Government.* Their office, as the heads of the Provinces, is a very high and a very honourable one indeed, but they are not Her Majesty's representatives, at least *quo ad* the matter now under consideration, and so as to bind Her Majesty in any matter not left exclusively under the Provincial control by the *British North America Act.* I mean that, admitting the theory that the Provincial laws must be held to be enacted in Her Majesty's name, and I need not consider how far this may be admissible, *this can be so only when such laws are strictly within the powers conceded to the Provincial Legislatures by the Imperial Act.* When they go beyond the limits assigned to them, they act without jurisdiction."

Gwynne, J. at pp. 634, 635, 637:

p. 634. "The head of their executive Government (i.e., of the Provincial Governments) is not an officer appointed by Her Majesty, or holding any commission from her, or in any manner personally representing her, but *an officer of the Dominion Government,* appointed by the Governor General, acting under the advice of a council, which the Act constitutes the Privy Council of the Dominion. The Queen forms no part of the Provincial Legislatures, as she does of the Dominion Parliament. The Provincial Legislatures consist in some Provinces of such subordinate executive officer and of a Legislative Assembly, and in others of such executive officer and of a Legislative Council and Assembly.

p. 635. The use of Her Majesty's name by these Provincial authorities is by the Act confined to the summoning and calling together the Legislatures; and, singular as it seems, this is, by the 82nd section, rather by accident, I apprehend, than design, confined to the Lieutenant-Governors of *Ontario* and *Quebec.*

By the 91st section it is declared that the acts of the Dominion Parliament shall be made by the Queen, by and with the advice and consent of the Senate and House of Commons, treating the Queen herself as an integral part of the Parliament, while the 92nd section enacts that the 'Legislatures' of the respective Provinces, that is to say, the Lieutenant-Governor and the Legislative Assembly in Provinces, having but one House, and the Lieutenant-Governor and the Legislative Council and Assembly in Provinces having two houses, shall make laws in relation to matters coming within certain enumerated classes of subjects, to which

their jurisdiction is limited. Nothing can be plainer, as it seems to me, than that the several Provinces are subordinated to the Dominion Government, and that the Queen is no party to the laws made by those Local Legislatures, and that no act of any of such Legislatures can in any manner impair or affect Her Majesty's right to the exclusive exercise of all her prerogative powers, which she continues to enjoy untrammelled, except in so far as we are obliged to hold that, by the express terms of the *B.N.A. Act,* or by irresistible inference from what is there expressed, she has, by that Act, consented to being divested of any part of such prerogative.

* * * * * *

The Provincial statute, in virtue of which the Letters Patent appoint- p. 637.
ing the appellants are professed to be issued, recites, that the Lieutenant-Governor *of right ought to* have the power of appointment. I fail to see, however, by *what right* that officer, who is not by the constitution Her Majesty's representative, *ought* to have the power to confer this title of honour in prfeerence to Her Majesty herself, and to her representative the Governor General of the Dominion."

Mercer v. *Attorney-General of Ontario* (1881), 5 S.C.R. 538.

Ritchie, C.J. at pp. 637, 638:

"To say then that the Lieutenant-Governors, because appointed by p. 637.
the Governor General, do not in any sense represent the Queen in the government of their provinces is, in my opinion, a fallacy; they represent the Queen as Lieutenant-Governors did before Confederation, in the performance of all executive or administrative acts now left to be performed by Lieutenant-Governors in the Provinces in the name of the Queen; and this is notably made apparent in section 82, which enacts that 'the Lieutenant-Governors of *Ontario* and *Quebec* shall from time to time, in the Queen's name, by instrument under the Great Seal of the province, summon and call together the Legislative Assembly of the province,'—and p. 638.
with reference to which matter, nothing is said in respect to *Nova Scotia* and *New Brunswick,* the reason for which is obvious, the executive authority at confederation continuing to exist, the Lieutenant-Governors of those provinces were clothed with authority to represent the Queen, and in Her name call together the legislatures—and also in the section retaining the use of the Great Seals, for the Great Seal is never attached to a document except to authenticate an act done in the Queen's name, such as proclamations summoning the legislatures, commissions appointing the high executive officers of the province, grants of the public lands, which grants are always issued in the name of the Queen, under the provincial Great Seals."

Taschereau, J. at 671:

"The question submitted to us by one of the learned counsel for the p. 671.
respondent as to whether the Queen forms part of the local legislatures seems to me to have no practical bearing on this case. That, when anything which, according to the principles of the British Constitution, must be done in her Majesty's name, has to be done by the Lieutenant-Governors of the provinces, under the *British North America Act,* they are authorized to do it in her Majesty's name, and are deemed then to act for her Majesty, has not, that I remember, been denied by the appellant. But they are not her Majesty's direct representatives, as the Governor

General is. They have never been considered as such by the Imperial authorities.

'The Lieutenant-Governors of the provinces of the Dominion, however, important locally their functions may be, are a part of the colonial administrative staff, and are more immediately responsible to the Governor General in Council. They do not hold commissions from the Crown, and neither in power nor privilege resemble those Governors, or even Lieutenant-Governors of colonies, to whom, after special consideration of their personal fitness, the Queen, under the great seal and her own hand and signet, delegates portions of her prerogatives and issues her own instructions,' says the Earl of Carnarvon in a despatch to Lord Dufferin dated January 7th, 1875: Vol. 8, No. 7 Sess. Papers, 1875.

That the Lieutenant-Governors are considered by the Imperial authori-
p. 672. ties as officers of the Dominion Government seems/also clear by the proceedings in the *Letellier* affair, and the despatch of *Sir Michael Hicks-Beach* to the Marquis of *Lorne* on the subject, dated July 3rd, 1879 (Accts. and Papers, Imp. H.C., Vol. 51, p. 127, Sess. 1878, 1879).

The following despatch of the Duke of *Buckingham* and *Chandos* to Lord *Monck,* is written in the same view of the Lieutenant Governor's position.

DOWNING STREET, October 19, 1868.

MY LORD,—I have under my consideration your Lordship's despatch, No. 170, of the 9th September, submitting the question whether the Lieutenant-Governors of the provinces within the Dominion of *Canada* are entitled to salutes from H.M. ships and fortifications within their respective provinces.

I have the honour to acquaint you that under the circumstances of the case, the Lieutenant-Governors of the provinces holding their commissions from the Governor General, will not be entitled to salutes.

I have the honour to be,
&c. &c. &c.

(Signed) BUCKINGHAM & CHANDOS.

THE VISCOUNT MONCK.

Another despatch from the Secretary of State for the Colonies, dated 7th November, 1872, though it recognizes the Lieutenant-Governors should be *deemed* to be acting directly on behalf of Her Majesty on certain occasions, treats them on ordinary occasions as representing the Dominion Government.

. . . . And with reference to the question asked by Sir *Hastings Doyle,* and submitted by Lord *Lisgar* for my decision, namely, 'whether the Lieutenant-Governors are supposed to be acting on behalf of the Queen,' I have to observe that, while from the nature of their appointment they represent on ordinary occasions the Dominion Government, there are, nevertheless, occasions (such as the opening or closing of a session of the provincial legislature, the celebration of Her Majesty's birthday, the holding of a levee, &c., &c.,) on which they should be deemed to be acting directly on behalf of Her Majesty, and the first part of the National Anthem should be played in their presence.

(Signed) KIMBERLEY.

A reference to the order of precedence established for *Canada* by p. 673.
Her Majesty shows that the Lieutenant-Governors do not take rank and precedence immediately after the Governor General, but only after the general commanding Her Majesty's troops, and after the admiral commanding Her Majesty's naval forces on the *British North America* station.

I do not cite these documents as conclusive evidence for a court of justice, but as worthy of consideration, and to show that the Imperial authorities and Her Majesty herself consider the Lieutenant-Governors as not generally representing the sovereign.

Gwynne, J. at p. 711:

"... of whose legislatures (i.e., of the provinces) Her Majesty does not, as she does of the Dominion, and as she did of the old provinces, constitute a component part, and to the validity of whose Acts, the Act which constitutes their charter does not even contemplate the assent of Her Majesty as necessary. The jurisdiction conferred on these bodies being purely of a local, municipal, private and domestic character, no such intervention of the Sovereign consent was deemed necessary or appropriate. ..."

Molson v. *Chapleau* (1883) 6 Legal News. 222.

Papineau, J. at p. 224 said:

"It has been properly said that the Queen cannot surrender any of her prerogatives, except by a law and in express terms. In like manner and more properly it may be said that the Queen cannot cease to be the personification of the sovereign authority in any part of the Empire without a law of the imperial parliament, or an agreement in express terms to that effect. For from the moment when it is no longer she who personifies the sovereign authority in every province of the Empire, that province is no longer an integral part of that Empire. Now, if the Queen has withdrawn, by the federal compact, both from the legislature and executive of the provinces, and if the Lieutenant-Governors are not her representatives, and do not exercise in her name and in her stead the authority which they exercise; these provinces are no longer integral parts of the Empire. The powers granted to the provincial legislatures are granted to them to the exclusion of the federal parliament. It is the same with the executive power. A certain number of these powers are rights of sovereignty, which can only be exercised by the sovereign or by her representatives in her name. Such are legislation over property and civil rights, the administration of justice, the constitution of the courts, as well civil as criminal, etc. Either the Lieutenant-Governors and Legislators act in their own name (then they are independent of Her Majesty) or they do so in the name of Her Majesty, and then they are her representatives. If it is right to say that Her Majesty in person does not form part of the provincial legislatures and provincial governments, it is equally right to say that she forms part of them by representation. For she cannot cease to form part of them, personally or by representation, without ceasing to be sovereign of those provinces."

The Queen v. *Bank of Nova Scotia,* (1885 11 S.C.R., 1.

Taschereau, J. at p. 24:

"The Lieutenant-Governors, no doubt, in the performance of certain of their duties as such under the B.N.A. Act, may be said to represent Her Majesty, in the same sense and as fully, perhaps, as Her Majesty is

represented, for instance, by justices of the peace, constables and bailiffs, in the execution of their duties. But it is the first time that I hear it contended, as has been done in this case, that the Lieutenant-Governor in a province, on matters not exclusively left to the provinces under the B N.A. Act, could ever use Her Majesty's name and prerogatives to defeat Her Majesty's rights and prerogatives."

Gibson v. *M'Donald* (1885) 7 O.R., 401.

O'Connor, J. at pp. 420, 421, 422:

p. 420. p. 421. "The Governor-General is the direct representative of the Queen, her only representative in Canada, holds his commission immediately from Her Majesty, and exercises the larger powers of the Executive of the Dominion inferior only to the powers of the Imperial Government, but superior to those of the Provincial Government.

He, therefore, exercises all the executive power which is vested in Her Majesty by the Act, and the prerogative powers of the Crown to the fullest extent that they are capable of being exercised in relation to the Dominion; that is, to the fullest that is consistent with colonial dependence, for that is the effect of his commission and instructions . . . . .

No person can administer justice but by the authority and in the name of the Queen.

She, therefore, appoints the Judges or Justices, who administer justice in her Courts.

In Canada the Governor, who alone represents her there, appoints the Judges in her name, under the advice of his council.

* * * * *

Of this Government (i.e., the provincial) neither the Queen nor her representative is a part. It is composed merely of 'officers', of whom the Lieutenant-Governor is an officer of the Dominion, appointed by the Governor General. This distinction is a marked one, which seems in itself clearly to exclude from the Provincial Government the exercise of the Crown's prerogative, and the statutory powers reserved to the Crown in relation to the administration of justice in Canada."

Regina v. *St. Catharines Milling Company* (1886) 13 O.A.R., 148.

Burton, J. A. at pp. 165, 166:

p. 165. "If it had not been for the expression to be found in some judicial utterances placing within very narrow limits the powers of the executive of the Provinces, I should have thought it too clear for argument, that the powers formerly exercised by the Lieutenant-Governors of the other Provinces, and by the Governor General of Canada in reference to provincial matters, including agreements or so-called treaties with the Indians for the extinguishment of their rights, and granting to them in lieu thereof certain reserves either for occupation or for sale, were now vested exclusively in the Lieutenant-Governors. The view that has been sometimes expressed that they do not represent Her Majesty for any purpose, appears to me to be founded on a fallacy, and to be taking altogether too narrow a view of an Act, which is not to be construed like an ordinary Act of Parliament, but as pointed out in the *Queen* v. *Hodge,* is to be interpreted in a broad liberal and quasi political sense.

* * * * *

There are several clauses of the British North America Act in which p. 166.
his power to act in the name of the Queen is expressly recognized, as for instance: section 82, which empowers him in the Queen's name to summon the Legislature: in sec. 72 the Lieutenant-Governor of Quebec is authorized to appoint legislative councillors in the Queen's name; and the Provincial Legislatures create Her Majesty's courts of civil and criminal jurisdiction, the writs in which are issued in Her Majesty's name. And this view appears to have received the direct confirmation of the Privy Council in *Theberge* v. *Laudry,* in which the Judicial Committee refer to an Act of the Provincial Legislature (2 App. Cas. 108) as having been assented to on the part of the Crown, and to which therefore the Crown was a party."

Att.-Gen. of Canada v. *Att.-Gen. of Ontario* (1891) 20 O.R. 222.

Boyd, C. at p. 247:

"What has just been said, answers also the argument based upon section 92, sub-sec. 1 of the Imperial Act, which forbids interference with the office of Lieut.-Governor. That veto is manifestly intended to keep intact the headship of the Provincial Government, forming, as it does, the link of federal power; no essential change is possible in the constitutional position or functions of this chief officer, but that does not inhibit a statutory increase of duties germane to the office."

The Liquidators of the Maritime Bank of Canada v. *The Receiver-General of New Brunswick,* (1892) A.C. 437.

Lord Watson delivering the judgment of the Judicial Committee of the Privy Council said:

"Their Lordships do not think it necessary to examine, in minute p. 441.
detail, the provisions of the Act of 1867, which nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the provinces. The object of the Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common p. 442.
interest, each province retaining its independence and autonomy. That object was accomplished by distributing, between the Dominion and the provinces, all powers executive and legislative, and all public property and revenues which had previously belonged to the provinces, so that the Dominion Government should be vested with such of these powers, property, and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the provinces for the purposes of provincial government. . . .

It would require very express language, such as is not to be found p. 443.
in the Act of 1867, to warrant the inference that the Imperial Legislature meant to vest in the provinces of Canada the right of exercising supreme legislative powers in which the British Sovereign was to have no share.

. . . If the Act had not committed to the Governor General the power of appointing and removing Lieutenant-Governors, there would have been no room for the argument, which, if pushed to its logical conclusion, would prove that the Governor General, and not the Queen,

whose Viceroy he is, became the sovereign authority of the province whenever the Act of 1867 came into operation. But the argument ignores the fact that, by sec. 58, the appointment of a provincial governor is made by the 'Governor General in Council by Instrument under the Great Seal of Canada,' or, in other words, by the Executive Government of the Dominion, which is, by sec. 9, expressly declared 'to continue and be vested in the Queen.' There is no constitutional anomaly in an executive officer of the Crown receiving his appointment at the hands of a governing body who have no powers and no functions except as representatives of the Crown. The act of the Governor General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant-Governor when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor General himself is for all purposes of Dominion Government."

Bonanza Creek Gold Mining Company v. *The King* (1916) 1 A.C. 566.

Viscount Haldane delivering the judgment of the Judicial Committee of the Privy Council said:

p. 579. ". . . It is to be observed that the British North America Act has made a distribution between the Dominion and the provinces which extends not only to legislative but to executive authority. The executive government and authority over Canada are primarily vested in the Sovereign. But the statute proceeds to enact, by s. 12, that all powers, authorities, and functions which by any Imperial statute or by any statute of the provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of these provinces shall, 'as far as the same continue in existence and are capable of being exercised after the Union in relation to the government of Canada,' be vested in and exercisable by the Governor General. Sec. 65, on the other hand,

p. 580. provides that all such powers, authorities, and functions shall, 'as far as the same are capable of being exercised after the Union in relation to the government of Ontario and Quebec respectively, be vested in and exercisable by the Lieutenant-Governors of Ontario and Quebec respectively.' By s. 64 the constitution of the executive authority in Nova Scotia and New Brunswick was to continue as it existed at the Union until altered under the authority of the Act.

The effect of these sections of the British North America Act is that, subject to certain express provisions in that Act and to the supreme authority of the Sovereign, who delegates to the Governor General and through his instrumentality to the Lieutenant-Governors the exercise of the prerogative on terms defined in their commissions, the distribution under the new grant of executive authority in substance follows the distribution under the new grant of legislative powers. In relation, for example, to the incorporation of companies in Ontario with provincial objects the powers of incorporation which the Governor General or Lieutenant-Governor possessed before the Union must be taken to have passed to the Lieutenant-Governor of Ontario so far as concerns companies with this class of objects. Under both s. 12 and s. 65 the continuance of the powers thus delegated is made by implication to depend on the appropriate Legislature not interfering.

There can be no doubt that prior to 1867 the Governor General was for many purposes entrusted with the exercise of the prerogative power of the Sovereign to incorporate companies throughout Canada, and such prerogative power to that extent became after confederation, and so far as provincial objects required its exercise, vested in the Lieutenant-Governors, to whom provincial Great Seals were assigned as evidences of their authority. Whatever obscurity may at one time have prevailed as to the position of a Lieutenant-Governor appointed on behalf of the Crown by the Governor General has been dispelled by the decision of p. 581.
this Board in *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* ((1892) A.C. 437, 443). It was there laid down that 'the act of the Governor General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor General himself is for all purposes of Dominion government.'

The form of the commission by which the Governor General appoints a Lieutenant-Governor to be Lieutenant-Governor of Ontario bears this out. For it runs in the name of the Sovereign, and is 'to do and execute all things that shall belong to your said command and the trust we have reposed in you, according to the several provisions and directions granted or appointed you by virtue of the Act of the United Kingdom of Great Britain and Ireland passed in the thirtieth year of the reign of Her late Majesty Queen Victoria, called and known as The British North America Act, 1867, and of all other statutes in that behalf and of this our present commission, according to such instructions as are herewith given to you or which may from time to time be given to you in respect of the said province of Ontario under the sign manual of our Governor General of our said Dominion of Canada, or by order of our Privy Council of Canada, and according to such laws as are or shall be in force in the said province of Ontario.'

. . . A yet larger view of the devolution and distribution of executive p. 585.
power in Canada was suggested in some of the arguments addressed to their Lordships from the Bar, and they are aware that this view has been contended for on former occasions in the Dominion. It has been urged in several cases which have occurred that the Governor General and the Lieutenant-Governors of the provinces, excepting so far as the Royal prerogatives have been reserved expressly or by necessary implication, have the right to exercise them, as though by implication completely handed over and distributed in such a fashion as to cover the whole of the fields to which the self-government of Canada extends. The Governor and the Lieutenant-Governors would thus be more nearly viceroys than representatives of the Sovereign under the restrictions explained in *Musgrove* v. *Pulido* ((1879) 5 App. Cas. 102), where it was laid down that, in the case of a Crown Colony, the commission of the Governor must in each case be the measure of his executive authority, a principle which, p. 586.
in such a case as that of a self-governing Dominion like Canada, might find its analogy in the terms not only of the commission but of the statute creating the Constitution.

The argument for the larger view concedes that it is the general rule in the construction of statutes that the Crown is not affected unless there be words to that effect, inasmuch as the law made by the Crown with the assent of the Lords and Commons is enacted *prima facie* for the subject and not for the Sovereign. But this principle of construction it is said cannot apply to an Act the expressed object of which is to grant a

Constitution with full legislative and executive powers. In the case of such an Act there is therefore no presumption that the general provisions it contains were not intended to include any matter of prerogative which, in the absence of the rule of construction above stated, would fall within the general words employed. For a Constitution, granted to a dominion for regulating its own affairs in legislation and government generally, cannot be created without dealing with the prerogative, and the British North America Act from beginning to end deals with matters of prerogative, for the most part without expressly naming the Sovereign.

If this argument were well founded it would afford a short cut to the solution of the question which has arisen in this appeal. For under the distribution of the prerogative which it assumes it would be difficult to see how a Lieutenant-Governor, placed in the position of a viceroy as regards matters pertaining to the government of his province, could be excluded from the prerogative power of incorporating by charter, unless that power had been expressly taken away by legislation.

But their Lordships abstain from discussing at length the question so raised. They will only say that when, if ever, it comes to be argued points of difficulty will have to be considered. There is no provision in the British North America Act corresponding even to s. 61 of the Australian Commonwealth Act, which, subject to the declaration of the discretionary right of delegation by the Sovereign in ch. 1, s. 2, provides that the executive power, though declared to be in the Sovereign, is yet
p. 587. to be exercisable by the Governor General. /Moreover, in the Canadian Act there are various significant sections, such as s. 9, which declares the executive government and authority over Canada to continue and be vested in the Sovereign; s. 14, which declares the power of the Sovereign to authorize the Governor General to appoint deputies; s. 15, which, differing from s. 68 of the Commonwealth Act, says that the command in chief of the naval and military forces in Canada is to be deemed to continue and be vested in the Sovereign; and s. 16, which says that, until the Sovereign otherwise directs, the seat of the Government in Canada shall be Ottawa. These and other provisions of the British North America Act appear to preserve prerogative rights of the Crown which would pass if the scheme were that contended for, and to negative the theory that the Governor General is made a viceroy in the full sense, and they point to the different conclusion that for the measure of his powers the words of his commission and of the statute itself must be looked to. In the case of *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* ((1892) A.C. 437, Vol. 1, p. 414) already referred to, it was said by this Board that the provisions of the Act 'nowhere profess to curtail in any respect the rights and privileges of the Crown or to disturb the relations then subsisting between the Sovereign and the provinces.' Properly understood, and subject to such express provisions of the Act as transfer what would otherwise remain prerogative powers, their Lordships are disposed to agree with this interpretation. It is quite consistent with it to hold that executive power is in many situations which arise under the statutory Constitution of Canada conferred by implication in the grant of legislative power, so that where such situations arise the two kinds of authority are correlative. It follows that to this extent the Crown is bound and the prerogative affected. But such a conclusion is a very different one from the far-reaching principle contended for in the argument in question."

In Re The Initiative and Referendum Act (1919) A.C., 935. The head-note reads as follows:

"The British North America Act, 1867, s. 92, head 1, which empowers a Provincial Legislature to amend the constitution of the Province, 'excepting as regards the office of Lieutenant-Governor,' excludes the making of a law which abrogates any power which the Crown possesses through the Lieutenant-Governor who directly represents the Crown.

The Initiative and Referendum Act, being 6 Geo. 5, c. 59 of the Acts of the Legislative Assembly of Manitoba, is invalid, since it would compel the Lieutenant-Governor to submit a proposed law to a body of voters totally distinct from the legislature of which he is the constitutional head, and would render him powerless to prevent it from becoming an actual law if approved by those voters. The offending provisions of the Act being so interwoven with its scheme as not to be severable, the Colonial Laws Validity Act, 1865, cannot be applied to validate any part of the Act."

Viscount Haldane delivering the judgment of the Judicial Committee of the Privy Council said:

". . . . The Executive Government of Canada was declared by the Act of 1867 to remain vested in the Queen, and, by s. 12, all powers, authorities and functions vested in or exercisable by the Governors or Lieutenant-Governors of the Provinces brought into confederation were, so far as the same continued in existence and were capable of being exercised after the Union in relation to the Government of Canada, to be vested in and exercisable by the Governor General. A Parliament was then set up for Canada. Part V of the Act established analogous Constitutions for the Provinces. For each of these there was to be a Lieutenant-Governor. Although he is under s. 58 appointed by the Governor General, it has been settled by decisions of the Judicial Committee, such as that in *Liquidators of the Maritime Bank of Canada* v. *Receiver General of New Brunswick* ((*1892*) *A.C. 437, Vol. 1, p. 414*), that, as the appointment of a Provincial Governor is made under the Great Seal of Canada, and therefore really by the Executive Government of the Dominion which is in the Sovereign, the Lieutenant-Governor is as much the representative of His Majesty for all purposes of Provincial Government as is the Governor General for all purposes of Dominion government. Sect. 65 and the other sections dealing with the subject define the powers of the Lieutenant-Governor as being such of those powers having been exercisable by the Governors or Lieutenant-Governors of the Provinces brought into Confederation, as are exercisable in relation to the Government of a Province. p. 941. p. 942.

. . . . After thus defining the executive power the statute goes on to provide for a Legislature for each Province, and concludes Part V by declaring in s. 90 that what has been laid down as to the Dominion Parliament in regard to Appropriation and Money Bills, the recommendation of money votes, the assent to Bills, the disallowance of Acts, and the signification of pleasure on Bills reserved, is to extend and apply to the Legislatures of the several Provinces as if these provisions were re-enacted and made applicable in terms to the respective provinces and their Legislatures, with the substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Sovereign and for a Secretary of State and of one year for two years and of the Province for Canada.

The Act then, by two well-known sections, 91 and 92, distributes the powers of legislation which it confers between the Dominion Parliament

p. 943. and the Provincial Legislatures. Nothing in s. 91, which relates to Dominion powers, affects the question under consideration, excepting in one important respect. . . . The language of s. 92 is important. That section commences by enacting that 'in such Province the Legislature may exclusively make laws in relation to matters' coming within certain classes of subjects. The only one of these classes which is relevant for the present purpose is the first enumerated, 'the amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, excepting as regards the office of Lieutenant-Governor.'

The references their Lordships have already made to the character of the office of Lieutenant-Governor, and to his position as directly representing the Sovereign in the province, renders natural the exclusion of his office from the power conferred on the Provincial Legislature to amend the constitution of the Province. The analogy of the British Constitution is that on which the entire scheme is founded, and that analogy points to the impropriety, in the absence of clear and unmistakable language, of construing s. 92 as permitting the abrogation of any power which the Crown possesses through a person who directly represents it. For when the Lieutenant-Governor gives to or withholds his assent from a Bill passed by the Legislature of the province, it is in contemplation of law the Sovereign that so gives or withholds assent. Moreover, in accordance with the analogy of the British Constitution which the Act of 1867 adopts, the Lieutenant-Governor who represents the Sovereign is a part of the Legislature. This is in terms so enacted in such sections as s. 69, the principle of which has been applied to Manitoba by s. 2 of the Dominion Statute of 1870, which formed the new Province
p. 944. out of Rupert's Land and the North-Western Territory, and established it with the Constitution provided by the Act of 1867. It follows that if the Initiative and Referendum Act has purported to alter the position of the Lieutenant-Governor in these respects, this Act was in so far ultra vires.

Their Lordships are of opinion that the language of the Act cannot be construed otherwise than as intended seriously to affect the position of the Lieutenant-Governor as an integral part of the Legislature, and to detract from rights which are important in the legal theory of that position. For if the Act is valid it compels him to submit a proposed law to a body of voters totally distinct from the Legislature of which he is the constitutional head, and renders him powerless to prevent it from becoming an actual law if approved by a majority of these voters. It was argued that the words already referred to, which appear in s. 7, preserve his powers of veto and disallowance. Their Lordships are unable to assent to this contention. The only powers preserved are those which relate to Acts of the Legislative Assembly as distinguished from Bills, and *the powers of veto and disallowance referred to can only be those of the Governor General under s. 90 of the Act of 1867*, and not the powers of the Lieutenant-Governor, which are at an end when a Bill has become an Act. Sect. 11 of the Initiative and Referendum Act is not less difficult to reconcile with the rights of the Lieutenant-Governor. It provides that when a proposal for repeal of some law has been approved by the majority of the electors voting, that law is automatically to be deemed repealed at the end of thirty days after the clerk of the Executive council shall have published in the *Manitoba Gazette* a statement of the result of the vote. Thus the Lieutenant-Governor appears to be wholly excluded from the new legislative authority.

These considerations are sufficient to establish the ultra vires character of the Act. The offending provisions are in their Lordships' view so interwoven into the scheme that they are not severable."

APPENDIX "B"

TABLE OF RESERVED BILLS, 1867-1920

(Dominion-Provincial Legislation 1867-1895, pp. 1336-1347)

Ontario

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
36 Vict., 1873.	An Act to incorporate the Loyal Orange Association of Western Ontario.	None assigned.....	No action taken....	Bill considered within the jurisdiction and competence of legislature, as objects are provincial.	25 Aug., 1873....	104
	An Act to incorporate the Loyal Orange Association of Eastern Ontario.	None assigned.....	No action taken....	Bill considered within the jurisdiction and competence of legislature, as objects are provincial.	25 Aug., 1873....	104
47 Vict., 1884, ch. 39.	The Ontario Factories Act, 1884.	Lieutenant-Governor asked that question as to whether Act is within the competence of legislature should be referred to Supreme Court.	No action taken....	Minister of Justice deemed it better to leave question of competence of provincial legislature to be tested in the ordinary way in the courts.	20 Jan., 1885....	195

Quebec

31 Vict., 1868.	An Act to incorporate the St. Louis Hydraulic Co.	That second clause of Act which authorized construction of this dam falls within powers of Parliament of Canada under 10th para. of 91st sec. of British North America Act.	Assent not given....	Apart from question of constitutionality of Act, it would not be safe in public interest to allow Bill.	11 Jan., 1869....	250
53 Vict., 1890.	An Act to legalize the marriage and contract of marriage of Aime Bourassa and Dame Purissima Robert.	Infringes on the legislative power exclusively assigned to the Dominion parliament by British North America Act, sec. 91, ss. 26 "marriage and divorce", and beyond powers of provincial legislature to enact.	No action appears to have been taken on this Bill.	.....	.....	436
54 Vict., 1890.	An Act to render the marriage contracted between Fredk. Pratt and Marie Albina Thibault civilly valid.	Infringes on the legislative power exclusively assigned to the Dominion parliament by British North America Act, sec. 91, ss. 26 "marriage and divorce", and beyond powers of provincial legislature to enact.	No action appears to have been taken on this Bill.	.....	.....	438

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
55-56 Vict., 1892.	An Act to legalize the marriage of Henri Aime Bouassa and Dame Purissima Robert.	Infringes on the legislative power exclusively assigned to the Dominion parliament by British North America Act, sec. 91, ss. 26 "marriage and divorce", and beyond powers of provincial legislature to enact.	No action appears to have been taken on this Bill.	Should Act be passed as a statute of the province of Quebec, Minister of Justice would have opportunity of considering questions involved, but at present advises no action thereon.	16 Feb., 1893....	458
	An Act to incorporate La Banque Hypothecaire Canadienne.	Dominion parliament alone has power to legislate on banking and the incorporation of banks. Name apt to create confusion.	No action appears to have been taken on this Bill.	Should Act be passed as a statute of the province of Quebec, Minister of Justice would have opportunity of considering questions involved, but at present advises no action thereon.	16 Feb., 1893....	458
			NOVA SCOTIA			
31 Vict., 1868.	An Act in reference to the Militia.	.....	No formal refusal of assent but Bill allowed to lapse out at end of year.	Nova Scotia legislature had no right or authority to pass the Bill.	.....	471
37 Vict., 1874.	An Act to facilitate arrangement between railway companies and their creditors.	Subject not within jurisdiction of provincial legislature, as touching on questions of bankruptcy and insolvency.	Assent given.....	Bill comes within judgment of Judicial Committee of Privy Council in case of L'Union St. Jacques de Montreal vs. Dame Julie Belisle. Bill provides full machinery for enabling a company temporarily embarrassed to provide means for continuing their operations and business.	8 Dec., 1874.....	484
42 Vict.....	An Act to incorporate the Nova Scotia District Branch of the Independent Order of Oddfellows.	14th Sec. trenches on jurisdiction of parliament as it attempts to deal with crimes.	Assent withheld....	Provisions of Bill clearly beyond powers of provincial legislature. Objectionable provisions, if allowed to stand might cause inconvenience and embarrassment.	16 June, 1879....	504

31 Vict., 1867-68.	An Act relating to presentations to Parishes in city and county of St. John county of Westmorland in province of New Brunswick.	.....	Assent withheld and Bill allowed to lapse at end of year.	.....	.....	649
32 Vict., 1869.	A Bill relating to the appointment of Justices of the Peace in the several counties of this province.	.....	Assent given.....	Bill within jurisdiction of legislature of New Brunswick.	14 Aug., 1869....	650
32 Vict., 1869, chap. 93.	A Bill relating to Marriage Licenses.	Not within jurisdiction of provincial legislature as trenching on subejct of marriage and divorce, British North America Act, sec. 91, para. 26.	Assent given.....	Bill within jurisdiction of New Brunswick as power of legislating on subject conferred on provincial legislatures by British North America Act, sec. 91, para. 26.	26 Nov., 1869... 11 April, 1870..	655 658
.....	An Act in addition to and in amendment of chap. 60, Title VIII, of Revised Statutes of Harbours.	Not within jurisdiction of provincial legislature.	Assent withheld....	Bill considered beyond jurisdiction of provincial legislature.	5 April, 1870....	659
34 Vict., 1871.	An Act relating to the Synod of the Church of England in the Diocese of Fredericton in province of New Brunswick.	First sec. contained the clause "any rights of the Crown, notwithstanding".	Assent given.....	Considered within jurisdiction of New Brunswick legislature, and no rights of Crown affected by it.	6 June, 1871.....	661
37 Vict., 1874.	A Bill to further continue and amend the Act to incorporate the Meduxnakik Boom Co.	In consequence of protest alleging that it would deprive American citizens of the rights secured to them by the Ashburton Treaty.	Assent given.....	Bill as originally submitted had been materially changed and several conditions added, qualified to secure free navigation of river to all lumber manufacturers and protest withdrawn.	27 May, 1874....	707
55 Vict., 1892.	An Act to declare the rights of the Crown as represented by the Government of the province in certain public lands and property.	No opinion expressed on subject of legal rights involved.	No action taken....	Unable to agree with view of law and facts on which the bill seems to have been passed.	26 Jan., 1893....	757

NEW BRUNSWICK—*Concluded*

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
57 Vict., 1894.	An Act to amend an Act respecting the use of Tobacco by Minors.	Doubt as to whether the legislature, in passing this bill, is not attempting to make sale of tobacco to minors, a crime, and if so, if sufficient power to pass such an Act is conferred on provincial legislatures by the British North America Act.	No action taken....	Doubtful if reserved Bill or the Act (56 Vict., ch. 36) which it amends, fall within legislative authority of the province. Inconveniences which might arise if Governor General were called upon to give effect to legislation of this kind, are sufficiently serious to justify withholding of assent, and usual course with respect to similar legislation should be followed.	14 Mar., 1895....	762

MANITOBA

35 Vict., 1871. Bill No. 44.	An Act to empower the Lieutenant-Governor to authorize the construction of Railways in this province.	Bill exceeded jurisdiction conferred upon legislature by Union Act, and in addition no provision made for compensation for infringement of rights of property or other vested rights, and it might thwart or impede any operations for construction of interoceanic railway under provisions of Dominion Act.	Assent withheld....	Contrary to first principles of legislation and for same reasons as assigned for the reservation of the Act.	25 Nov., 1871...	.....
Bill No. 45....	An Act to authorize the construction of a Telegraph Line in this province.	Bill exceeded jurisdiction conferred upon legislatures by Union Act.	Assent withheld....	Act should be passed by Dominion parliament and also for reasons assigned for reservation of Act respecting construction of railways.	25 Nov., 1871...	770
Bill No. 46....	An Act to incorporate the Western Railway of Manitoba.	Similar reasons to those assigned for reservation of Act to empower Lieutenant Governor to authorize construction of railways in province.	Assent withheld....	Act should be passed by Dominion parliament and also for reasons assigned for reservation of Act respecting construction of railways.	25 Nov., 1871...	770

35 Vict., 1871, Bill No. 47.	An Act to incorporate the Red River Bridge Co. of Manitoba and to authorize the construction of a Bridge across the Red River opposite or near Fort Garry, and to levy tolls on said Bridge.	Proposed bridge would interfere with the navigation of river.	Assent withheld....	Interference with navigation of river—a river navigable at certain seasons for a distance of 400 miles.	25 Nov., 1871...	770
35 Vict., 1872.	An Act to incorporate the Manitoba Central Railway Co.	Unwise to grant charter pending location of interoceanic railway.	Assent withheld....	Same reasons as those assigned for reservation.	24 Sept., 1872...	772
	An Act to incorporate the Assiniboine and Red River Navigation Co.	Trenches on ground reserved for Dominion parliament respecting nagivation and shipping.	Assent withheld....	Act within competence of provincial legislatures but objectionable, as 2nd clause provides that shareholders of company shall be, to all intents, partners in same. This is contrary to first principles governing incorporation of companies. If promoters desire to do business on Red River beyond limits of Manitoba or within United States, act of incorporation should be obtained from Dominion Parliament.	24 Sept., 1872...	772
	An Act to constitute and incorporate the Law Society of Manitoba.	Apart from question of policy, bill is premature and obstacles should not be placed in way of any person in good standing at bar of other provinces to practise law in Manitoba. Undesirable to restrict the selection of Judges. Power to regulate fees is objectionable.	Assent withheld....	For same reasons as those assigned for reservation.	24 Sept., 1872...	773
35 Vict., 1872.	An Act respecting Land Surveyors.	Objectionable on much the same grounds as Act respecting law society. Creates Monopoly, which is unwise in present state of new and undeveloped country.	Assent withheld....	For same reasons as are assigned for reservation.	25 Sept 1872...	773
36 Vict., 1873.	An Act respecting the Study and Practice of the Law.	Questionable whether province be sufficiently advanced, and whether bar is of sufficiently stable, settled character, to justify placing control of bar in hands of practitioners resident in province.	No action appears to have been taken upon this Bill.	.....	.....	775
	An Act to amend the Act 36th Vict., chap. 20, for the prevention of Prairie Fires.	Certain clauses contrary to sound principles, and likely to prove injurious to interests of Dominion. They make surveyors, railway companies and contractors liable for result of fires caused by their men, irrespective of facts whether there was negligence or whether men were under control of employers.	Assent withheld....	Provisions appear likely to seriously interfere with survey of public lands.	.....	777

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
36 Vict., 1873. ch. 42.	An Act to impose a Tax on Wild Land.	Similar Act passed in British Columbia was reserved.	Assent given.....	Act proposes annual tax on all lands of province, but exempts lands: (1) vested in Her Majesty; (2) held for benefit of Indians; (3) entered as homesteads; (4) held by Canadian Pacific railway; (5) set apart for half-breed minors.	21 Feb., 1874....	777
Chap. 43.....	An Act respecting Aliens..	Doubts entertained as to power of provincial legislature to deal with subject. As Act deals with holding of property by aliens, assent recommended.	Assent given.....	Legislation respecting property and civil rights under control of provincial legislature. Act deals with holding of property by aliens.	21 Feb., 1874....	777
Chap. 44.....	The Half-Breed Land Grant Protection Act.	Act is retroactive dealing with existing contracts and cancelling them. Opens fruitful door for litigation. No machinery provided for carrying out sale of lands on which lien is established.	Assent given.....	Act beneficial in protecting interests of persons entitled to share in half-breed land grant.	21 Feb., 1874....	778
Chap. 45.....	An Act to incorporate the Eastern Railway Company of Manitoba.	Possible interference with line of Pacific railway. Objectionable clause in bill making shareholders partners though limiting liability to amount of shares.	Assent given.....	Act considered unobjectionable..	25 Feb., 1874....	779
38 Vict., 1875	An Act respecting Land Surveyors and the Survey of Lands in the province of Manitoba.	Bill deemed objectionable for following reasons: (1) Bulk of lands in province, being yet Crown Lands, belong to the Dominion, and bill prohibits any one from acting as surveyor unless possessing proper qualifications. (2) Deals with whole question of mode of surveying lands in province. (3) Creates conflict of authority, as Dominion Lands Act provides who shall act as surveyors of Dominion lands and mode of survey of Dominion lands; also provides for board of examiners for admission of deputy surveyors, as does present bill. Provisions of bill are illiberal and unjust and would create a monopoly.	Assent withheld....	Same reasons as those assigned for reservation, and see also pp. 773 and 794.	29 Jan., 1876....	795

40 Vict., 1877.	An Act to incorporate the Manitoba Investment Association (Ltd.).	Powers conferred the association were beyond competence of provincial legislature, as Dominion parliament has exclusive authority in respect to "banking and interest". Bill appeared to authorize association to carry on some of the branches of business usually regarded as banking.	No action taken....	Question raised is one of great difficulty. Inconveniences might arise if Governor in Council called upon to give vitality to provincial legislation of this description.	4 Oct., 1876.....	814
	An Act to amend the Act passed in the 37th year of Her Majesty's reign, intituled: "The Half-breed Land Grant Protection Act".	Previous Act passed in 1875 was disallowed (see Manitoba, 38 Vict., ch. 37, pp. 804 and 805).	Act left to its operation.	Length of time which has elapsed since passing of original Act, during which time the Half-breeds, as a rule, because well acquainted with value of their interests in the land.	3 May, 1878.....	821
53 Vict., 1890: ch. 56.	Bill respecting Sales of Lands for Taxes.	Comparison of Bills with clause of ch. 45 of 52 Vict. to which exception was taken by Report of Minister of Justice shows them to be virtually the same as above Act. Lieutenant-Governor considered himself bound by considerations which induced disallowance of ch. 45 of 52 Vict. Assent to Bills calculated to lead to confusion in municipal accounts and injustice to individuals.	No action taken....	Bills might have been dealt with in usual manner without having been reserved for Governor General's assent. Ch. 56 if assented to, would have had to be disallowed, as it was re-enactment of provisions which had already been disallowed.	18 Mar., 1891...	927
Ch. 57.....	Bill respecting arrears of Taxes in the City of Winnipeg.					
54 Vict., 1891, ch. 8.	An Act to authorize companies, institutions or corporations incorporated out of this Province to transact business therein.	Comparison of Bill with ch. 23 of 53 Vict. (which was disallowed) shows that it is virtually a re-enactment of the Act ch. 23, 53 Vict. Though assent might have been given, yet having regard to peculiar conditions obtaining in Province at the time and for reasons given in despatch (pp. 989 and 990) the Lieutenant-Governor reserved his assent.	No action taken....	No report on the Reserved Bill appears to have been made by the Minister of Justice.	.....	989

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
35 Vict., 1872.	An Act to amend the Qualification and Registration of Voters Act, 1871.	The 13th clause of Bill precluded exercise of electoral franchise by Chinese and Indians, in contravention of instructions to governors, and of British North America Act, 1867, sec. 91, ss. 24.	Assent given.....	Imperial instructions to Governors of colonies are not applicable to Lieutenant-Governors. No instructions of such nature in commission or instructions to Governor General since 1867. Ss. 24, s. 91, of British North America Act, has reference to legislation connected with Indians generally and to lands reserved for them. S. 92 of British North America Act confers on each province the right of legislating as to its franchise.	18 Sept., 1872...	1011
35 Vict., 1872.	An Act to amend the Military and Naval Settlers' Act, 1863.	Operation of Act would be in conflict with 11th sec. of terms of Union with Canada	Assent withheld....	For same reasons as assigned for reservation.	25 Sept., 1872...	1013
	An Act to impose a Wild Land Tax.	Doubtful whether it may be considered that it may apply to land hereafter to be appropriated for railway purposes under 11th section of terms of union.	Assent withheld....	For same reasons as assigned for reservation.	8 Oct., 1872.....	1013
36 Vict., 1872-1873, ch. 43.	An Act to render legitimate children born out of lawful wedlock whose parents now are, or may hereafter, under certain restrictions, be married.	.....	No action appears to have been taken on this Bill.	.....	.....	1018
40 Vict., 1877, No. 35.	An Act to amend the Gold Mining Amendment Act, 1872.	Act gives jurisdiction in all personal actions to gold commissioners in Kootenay and Cassiar, and appears to trench on 36th sec. of British North America Act, which vests appointment of supreme and county court judges in Governor General alone, and provincial legislature has not power to make the appointments mentioned in the Act.	Assent withheld....	Jurisdiction of mining court in districts referred to will be greater than that of county court, and equal to that of supreme court. If assented to it would be necessary for a supreme court judge to proceed to district named, to try criminal cases. Bill should have been disposed of by local authorities themselves.	29 Sept., 1877...	1054

37 Vict., 1874, ch. 30.	An Act to vest a certain portion of Government House farm in the city of Charlottetown for certain purposes therein mentioned.	Act was passed 14th June, 1873, whereas addresses of legislative council and assembly of Prince Edward Island expressing desire to enter confederation are dated 28th May, 1873. Transfer of any public property after that date would clearly be incorrect as regards its subsequently becoming a province.	Assent withheld....	For reasons similar to those assigned for reservation.	25 Mar., 1874...	1153
	The Land Purchase Act, 1874	Affects private rights by enforcing compulsory sale by proprietors of 500 acres or upwards at prices to be determined under system of arbitration.	Assent withheld....	Act objectionable as it does not provide for impartial arbitration in which proprietors would have a representation.	23 Dec., 1874...	1154
38 Vict., 1875.	The Land Purchase Act, 1875	Bill of similar character passed in 1874 had been reserved.	Assent given.....	Objections to bill in previous session were removed and bill is one coming within the competence of a provincial legislature.	26 May, 1875....	1161
39 Vict., 1876.	An Act to amend the Land Purchase Act, 1875.	None assigned.....	Assent withheld....	Bill is retrospective in its effects. Deals with rights of parties now in litigation under the Act which it is proposed to amend. Absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.	18 July, 1876...	1176
	An Act to vest a certain portion of Government House farm in the city of Charlottetown for certain purposes therein mentioned.	No reasons assigned; former Act on same subject was disallowed.	Assent given.....	No injury will result to the Government House grounds by alienation of the land. Present Lieutenant-Governor sees no objection to bill being passed.	2 Dec., 1876....	1182
41 Vict., 1878.	An Act to repeal certain Acts relating to the Church of England in this province, and to make provision in lieu thereof.	Among Acts repealed by this Act is a permanent one declaring the liturgy of the church established by laws of England in Prince Edward Island shall be deemed fixed form of worship in Island. Act therefore dis-establishes Church of England and interferes with prerogative of the sovereign as the temporal head of the church. Act has no suspending clause.	Assent given.....	Bill within legislative authority of the provincial legislature, and is one in which no Dominion or Imperial interests are involved.	14 April, 1879...	1200

Act	Title	Reason for Reservation	How Dealt With	Reasons for Action	Date of Report of Minister of Justice	Page
41 Vict., 1878..	An Act to incorporate the Provincial Grand Orange Lodge of Prince Edward Island and the subordinate Lodges in connection therewith.	Similar bills passed in Ontario in 1873 were reserved.	No action taken....	Same reasons as given for action taken with reference to similar bills passed in Ontario in 1873. (see ante pages 79 and 80).	14 June, 1879....	1203
55 Vict., 1892..	An Act respecting the Legislature.	.....	No action taken....	Objects of bill are to abolish the legislative council to provide for legislature consisting of one House only; to change to some extent the representation and amend laws relating to election for legislature. These are matters within competence of legislature and reasons given by Lieutenant-Governor are not sufficient to warrant Governor General in accepting responsibility respecting measure.	26 Jan., 1893....	1225

TABLE OF RESERVED BILLS 1896-1920

(Provincial Legislation 1896-1920, p. 849)

BRITISH COLUMBIA

7 Ed. VII, ch. 21A.	An Act to regulate Immigration into British Columbia	None assigned.....	Assent withheld....	Having regard to its own language bill could not have any effect even if it were assented to, inasmuch as its leading provision merely declares the immigration into British Columbia of certain classes of people to be lawful, but the immigration of these people is lawful quite independently of the provisions of the Bill.	27 Nov., 1907...	690

5 Geo. V, 1915, Bill No. 19.	An Act to amend the Pool-rooms Act.	Provisions of the Bill appear to affect the standing of aliens in the province and should it become law might seriously interfere with our international relations and federal interests.	Assent withheld....	Whatever the effect these provisions may have as to aliens or international relations, the Minister of Justice was not prepared to recommend that they should go into operation.	25 Jan., 1916....	698
9 Geo. V, 1919, ch. 86.	An Act to amend the "Vancouver Island Settlers' Rights Act, 1904".	Instructed withhold his assent to any such bill or to reserve the same for the signification of the Governor General's pleasure.	Assent withheld....	The proposed legislation was clearly in conflict with the policy that His Excellency's Government has enunciated by Order in Council of 30th May, 1913, disallowing a former Act of British Columbia, ch. 71 of 1917, and was consequently not a measure which could receive the approval of His Excellency's government.	26 Jan., 1920....	759
10 Geo. V, 1920	An Act to amend the "Vancouver Settlers' Rights Act, 1904".	None assigned.....	Assent withheld....	This bill was simply a reproduction in terms, with substitution of dates, of a bill passed by the legislative assembly of British Columbia bearing the same title and reserved by His Honour the Lieutenant-Governor for the signification of His Excellency's pleasure of 29th March, 1919. Assent withheld from this bill for the same reason as in the case of the bill referred to.	29 Mar., 1921...	75